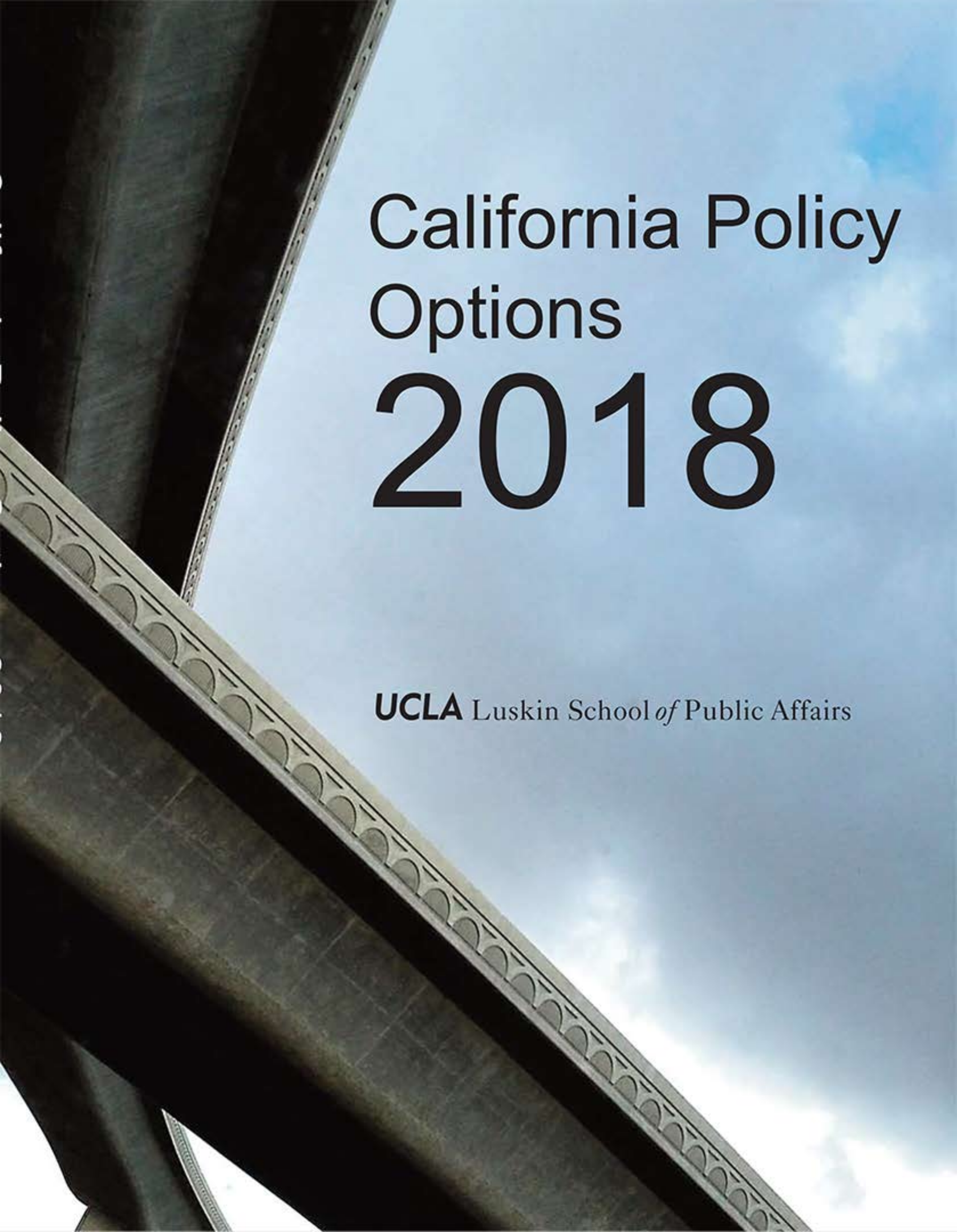


A low-angle, upward-looking photograph of a bridge structure, likely the San Francisco-Oakland Bay Bridge, showing the massive concrete piers and the bridge deck with its distinctive arched ventilation patterns. The sky is a pale blue with soft, white clouds. The text is overlaid on the right side of the image.

California Policy Options 2018

UCLA Luskin School *of* Public Affairs

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Options

Edited by Daniel J.B. Mitchell

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Preface

California Policy Options, now in its third decade, has informed researchers and journalists, as well as leaders and lawmakers, with a timely collection of research and public policy recommendations on issues and opportunities in the state.

As it has since 1997, the annual publication advances research-based solutions for California's many, multi-faceted urban and regional challenges. These include the state's economic situation and its leadership as well as a wide range of issues of interest and importance to the multi-millions who reside here: business and employment, health and safety, education, transportation, housing, and resources such as clean water and air to name just a few.

Once again, longtime series editor and UCLA Professor Daniel J.B. Mitchell has assembled a new collection of California-focused articles that add to a long list of important readings for not only policy and law makers but, for more than 20 years, Luskin undergraduate students enrolled in the School's popular California Policy Issues course. The course is co-taught each winter quarter by Prof. Mitchell and Visiting Professor Michael Dukakis, who also has taught at the school for more than 20 years.

This edition, *California Policy Options 2018*, continues the tradition of providing analysis of the state's public policy problems from a variety of viewpoints as well as their political, economic and historic contexts.

Gary Segura

Dean, UCLA Luskin School of Public Affairs

Introduction

Since 1997, *California Policy Options* has annually highlighted issues of current importance to California and its local jurisdictions. Our volume for 2018 is no exception. And when we reach back into California's history, going back to Spanish colonial times, a key issue has been the allocation of water. With a growing population and with competing uses for water in the state as a background, Rachel Roque ("*California's Water Policy Challenges*") points to the variations in water supply seasonally and geographically that have long been a challenge to the state. At times, areas of the state have an overabundance of water and risk of flooding. At other times, water shortages have developed. In more recent decades, environmental concerns and various constitutional fiscal limitations have been added to the constraints on California water policy and programs. In that context, large projects – such as the “Delta Fix/Twin Tunnels” proposed by Governor Jerry Brown – automatically become contentious.

Infrastructure construction and maintenance costs also figure prominently when it comes to transportation. And, as Martin Wachs points out ("*Raising Revenue for California Transportation: Are Direct User Fees in Our Future?*"), traditional means of funding may be inadequate. The gasoline tax and other motor vehicle fees have been important sources of support in the past, and in 2017, the legislature has increased revenue from those sources. But at this writing, there are efforts to undo the increases via the ballot. Local jurisdictions have supplemented such sources recently with increments to the sales tax. But if user fees are to be a continuing source, the gas tax as a proxy for use may be reaching its limits. Wachs points to experimentation with taxation systems based on actual road usage. A key issue is the degree of public acceptance, particularly given the fact that most voters don't know how transportation is currently funded.

California has a long history of periodic state budget crises, typically linked to downturns in the business cycle and therefore to tax revenue. As Daniel J.B. Mitchell points out ("*If Not About Legacy, Then About What? Jerry Brown's 2017-18 Budget*"), Governor Brown, who will be termed out after the 2018 gubernatorial election, has to be thinking about what he leaves behind for the state. Part of his legacy is an effort to counter the volatility of the state's tax system by building up a “rainy day” fund. As the Mitchell chapter points out, however, California – after the 2016 presidential election – has in some sense become an anti-Trump land. Given the intertwining between the state and federal government, that stance adds to the potential fiscal challenges faced by the state, particularly in the health care area.

A major challenge facing California, especially in its urban localities, is affordable housing. There are forms of rent control in various jurisdictions, including in the City of Los Angeles. But such controls have mixed effects, as pointed out by Susan Oh, Karen Law, Cameron Burch, and Ahmed Ali Bob ("*Reimagining the Los Angeles Rent Stabilization Ordinance: Preventing Displacement of Vulnerable Renters in South Los Angeles*"). Rising rents and “gentrification” tend to push lower-income people out of their residences. Rent controls may slow that impact. Many renters, however, are unaware of their

rights and the authors suggest ways of improving information access and response to complaints of violations.

Although California schools are not segregated by law, there is substantial *de facto* segregation due to neighborhood demographics and their reflection of income disparities. Charter schools were not created with desegregation as a primary objective. Nonetheless, it was thought that they might contribute to desegregation because of their independence and because of the fact that they could draw in a diverse group of enrollees from outside their locations. In her chapter, Jennifer B. Ayscue (*"Charter School Segregation in the Los Angeles Unified School District"*) finds, however, that charters haven't had that effect in Los Angeles. One possibility, she points out, is that desegregation might be made an explicit goal when applications for establishing charter schools are filed and considered.

The outcome of the 2016 presidential election contradicted the predictions of most pollsters and political prognosticators. But such upsets – particularly when they involve a candidate using unconventional appeals and flouting past political norms – are not a recent phenomenon. The City of Los Angeles' mayoral contest of 1961, provides an example, as Daniel J.B. Mitchell points out (*"The Trash-Talking Candidate Who Wasn't Supposed to Win"*) in his chapter. "Maverick" candidate Sam Yorty beat an establishment incumbent in an upset election that relied heavily on television, the electronic medium of the day, and dramatic charges of incompetence and corruption.

California has put in place ambitious goals regarding reduction of emissions of greenhouse gas and other pollutants. Plug-in electric vehicle promotion plays an important role in reaching those goals. But unless there is widespread capacity to charge such vehicles, only a portion of their miles driven will be under purely electric power. In their chapter on fostering increased electric charging capacity, James Di Filippo, Mahito Moriyama, Toru Terai, Kelly Trumbell, and Jiahui Zhang (*"Prioritizing Workplace Electric Vehicle Charging Station Investments in Los Angeles County"*) note that commuting is an essential part of the driving for most vehicles. Thus, if workplaces had facilities to charge vehicles, more miles would be driven under electric power. For Los Angeles County, the policy question is where best to put resources into encouraging charger capacity for workplaces. The authors find that a relatively small number of locations could have large effects on electric-powered mileage.

Crime control and law enforcement are major responsibilities of local jurisdictions as well as of state government. When individuals are arrested for criminal conduct, the issue arises of what to do with them between the time of arrest and the court resolution of their cases. As have other states, California has long had a system of bail to ensure that defendants show up in court at the appropriate time. The objective of the bail system is to create a monetary incentive for defendants to return on schedule. But if they can't post bail, they may be held in jail for significant periods. Most defendants do not have the financial resources to post bail and thus are dependent on private bail agencies for resources. But such agencies charge substantial fees, even if the defendant is ultimately acquitted. Many cannot afford bail, and so remain in jail. In their chapter, Pranita Amatya, Shelby King, Shelby McNabb, and Heidi Schultheis (*"Bail Reform in California"*) note that the ultimate goal of the system is bringing people who are arrested and charged back to court. They argue that there are indicators other than monetary bail of the probability that a defendant will return. The authors explore an alternative to the bail system which is

on the agenda of the state legislature and which – they argue – would be a fairer system than traditional bail. It would also reduce the costs of jailing individuals who can't make bail.

As noted above, state and local budgets are highly sensitive to the business cycle. There hasn't been an economic downturn in California since the Great Recession that began in late 2007 and bottomed out in 2009. Robert A. Kleinhenz and Christopher Thornberg ("*The California Outlook: Slow But Steady*") see no new recession on the horizon, although the political climate in Washington adds to general economic uncertainty. They note that California had a deeper recession than the country as a whole, but a more rapid (although not dramatically fast) recovery. The pace of California's expansion has now slowed, but not because of some impending crisis. Rather California is hitting capacity constraints from its labor force and, indirectly, from high housing costs which make labor attraction and retention difficult.

Finally, California has long been viewed as a "progressive" state in the sense of its reliance on direct citizen action. But citizens need to know what government is doing in order to play that role. One tool citizens have in California is access to public records. But, as Stan Paul ("*Conducting Public Business in Private: Electronic Communications and the California Public Records Act*") points out, significant government business is now done electronically, especially through email. Civil servants and elected officials may handle public business through private email accounts, thus raising for the courts the issue of how much public access there must be when public business is transacted through private means. As he points out, while the courts recognize that there are privacy issues involved, the presumption is now that if public business is handled through private email, those records – within limits that are evolving – have to be accessible.

The ten chapters described above provide a mix of topics that reflect key issues facing California. They also reflect a mix of authors – faculty, students, and professionals – with interests on those topics. We thank the participants for their contributions as well as all past contributors over the twenty-one years of *California Policy Options*.

Daniel J.B. Mitchell

Professor Emeritus, UCLA Anderson Graduate School of Management
and UCLA Luskin School of Public Affairs

Chapter 1

California Water Policy Challenges

Rachel Roque

Rachel Roque is a 2017 Master of Urban and Regional Planning
graduate of the UCLA Luskin School of Public Affairs

The history of California has always been a narrative about the interaction between water, land, and power.¹ The massive urbanization of Los Angeles was made possible by William Mulholland's Los Angeles aqueduct, which still echoes in heavily mythologized California Water Wars. Yet centuries before Europeans arrived in California, civilizations here affected, and were affected by, the cycles of drought, floods, and El Niño. Over time, explosive population growth has degraded our watersheds, to the detriment of Californians.

The state now faces a complex web of nested, interrelated challenges built on a history of *ad hoc* water provision. In addition to the geopolitical complexity of the region, the dual concerns of water supply and quality are increasing in importance. Drought, climatic shifts, and the demands of a growing population all place additional strain on water resources and infrastructure. How the state procures and protects its water will be a major factor in whether it thrives or stagnates. But these daunting complications also present an opportunity to forge a new set of solutions – as it has with energy efficiency, California has already begun to create a template for other states in the realm of water efficiency.

In order to meet the needs of a changing population and climate, we will need to improve public education, data collection, and financing mechanisms to ensure consistent water supply and quality. Public agencies must learn to be accountable, not only to the public of today, but also to future generations. Water policy responses to climate change must be iterative and adaptive, rather than concrete. Water resilience is achievable through a difficult combination of regional self-reliance, with a coordinated approach to updating water management systems.

CLIMATE CHANGE

California's mild climate is the foundation for many of our most important industries, but there is variation in the state's climate patterns that has not been considered in earlier stages of development. For instance, in addition to seasonal variation, California is affected by the El Niño and La Niña cycles and much longer drought cycles. Much of the modern settlement in the state has occurred during an unusually wet historical period. What we now experience as a drought

¹This chapter was developed from a report prepared for UCLA course Public Policy 10B – California Policy Issues – Winter 2017.

may actually be a reversion to normal conditions for the region. But now there are complications inherent in climate change, such as hotter weather, and storms that are more intense and more frequent (Andrew 2015).

California's problems include too little water at some times, and too much water at others. In spite of massive infrastructure systems dedicated to controlling water, across the state "...there remain 7 million people and over half a trillion dollars of property at risk from flooding" (Andrews 2015; California Water Plan 2013). The state has relied on seasonal delivery of water, where the snowpack is stored on the Sierras and winter monsoons punctuate long months without rain. Groundwater has traditionally been a less reliable storage method than snowpack; it is either contaminated, or politically contested, or both (US Department of the Interior 2013; Hanak et al. 2016; Andrew 2015).

As the timing of hydrology cycles shifts, the state's aging water architecture and practices are dangerously out of sync. For instance, reservoirs in the Central Valley are drained in the winter to accommodate spring runoff. Now, as snow melts earlier in the season than it traditionally did, the runoff is also occurring earlier in the year, when there is already "too much water to manage" in the system.

Flood peaks are increasing even as the heightened variability of river flows reduces groundwater recharge. The risk of sea water encroaching into freshwater supplies during periods of localized flooding is increasing, according to models of that risk (US Department of the Interior 2013). As with most environmental hazards, the risks of flooding (water contamination, disease transmission, and displacement) fall most heavily on communities and households with the fewest resources to defend themselves (Andrews 2015; Balazs and Ray 2015; Hanak et al. 2016).

Resilience will require a coordinated multi-scalar approach to updating water management systems. As it has with energy efficiency, California has already begun to serve as a template for other states in the realm of water efficiency. In order to meet the needs of a changing population and climate, the state will need to improve its public education, data collection, and financing mechanisms. State and local water agencies must learn to be accountable, not only to the public of today, but also to future generations.

WATER RIGHTS

Water rights in western states tend toward complexity, but California's system of legal water rights is uniquely incoherent. When gold was discovered in California, the mining industry provided one of several templates for how water was allocated. The English tradition of common law, also known as the riparian doctrine, was another. Both methods of allocating rights have proven to be a poor fit for the specific resource and region of water in California. They result in intractable problems that have resisted the burgeoning bureaucracies designed to address them.

Riparian rights are related to the *use* of water, rather than the ownership of water. Such rights allocate water's use based on ownership of water-adjacent land. Furthermore, they developed in a part of the world where water is much more abundant than it is in California. The riparian doctrine has not been easy to apply to arroyos in arid lands. Very quickly after California entered statehood, it became an issue that riparian rights did not extend to non-riparian lands, where miners required massive volumes of water for hydraulic mining (Hanemann et al. 2015, pp. 52-53). In addition to the common law rules, the California legislature approved an adaptation of mining rules for land claims to water usage: "first in time, first in right."

This new approach of appropriative rights also turned out to be unsuitable for water usage. For instance, the rules that govern mining claims were designed to facilitate rapid, orderly turnover to maximize extraction. They do not account for the nuances and spatial considerations of water usage; there was no need to consider quantity for land claims and no system to establish seniority. Adapting appropriative rights to water was an unmitigated disaster in California.

Still, California continued with a laissez-faire approach, haphazardly applying its two often-contradictory systems of riparian and appropriative rights. Irrigated acreage in the state exploded from 60,000 acres in 1870 to 4.2 million in 1920, in large part due to massive, fraudulent land and water grabs. For instance, James Haggin claimed rights to irrigate two million acres of land from the Kern River, which was both far more land than he actually owned, and many times more water than the river ever carried (Hanemann et al. 2015, p. 60). In 1911, reform-minded politicians swept into power and legislated that "All water or the use of water within the State of California is the property of the people of California." Progressive reformers created a

conservation board and subsequent water commission to regulate surface waters (Hanemann et al. 2015, pp. 60-61).

As environmental issues emerged as a priority in the 1960s, the water rights board era led to a series of experimental regulatory mechanisms in the state. Although the State Water Resources Control Board (SWRCB) ostensibly had legal authority to monitor and enforce water rights, it was paralyzed by political realities. Since the mid-2000's, however, the SWRCB has gained strength and energy, particularly in the Delta (Hanemann et al. 2015). Overall, the tangle of riparian and appropriative rights, complicated by ineffectual oversight, has created a crisis that is aggravated in times of drought.

REGULATORY ENVIRONMENT

Generally, federal law regulates water quality and pollution, while municipalities are responsible for flood risk and water supply at the local level (Blanco et al. 2012). Many cities and counties have begun to address these related concerns simultaneously, with multifunctional infrastructural approaches. Integrated planning in California represents one way that municipalities reconcile their responsibilities to protect the environment, ensure safe and sufficient water supplies, and defend people and property from flooding.

The federal Clean Water Act (1972) requires permitting for point source pollution from municipal, industrial and construction. In order to meet these requirements, facilities and municipalities participate in the National Pollution Discharge Elimination System (NPDES). The Environmental Protection Agency (EPA) is responsible for issuing permits, but may delegate to the states under the doctrine of cooperative federalism. While this power allows for some needed flexibility, it also leads to legal ambiguity and gray areas that can only be illuminated through litigation.

In California, the Porter-Cologne Water Quality Control Act (1969) places state authority to issue permits under the State Water Resources Control Board and nine Regional Water Quality Control Boards (Monette 2016). NPDES permits provide specific total maximum daily load (TMDL) allowances for municipal separate stormwater sewer systems (MS4). But the authorizing language in the Clean Water Act is vague, urging only that MS4 operators should "...reduce the

discharge of pollutants to the maximum extent practicable.” In Los Angeles County, the operator of the interconnected system that makes up our MS4 is the Los Angeles County Flood Control District. Originally, MS4 permits applied primarily to wastewater. However, they have expanded in coverage with the 1987 amendment of the Clean Water Act to include stormwater requirements.

Article XIII of the California constitution (Proposition 13 of 1978) has sealed off traditional sources of municipal funding for almost forty years. Proposition 4, popularly called the “Gann Initiative” after anti-tax activist Paul Gann, amended the California Constitution in 1979 with limits on government spending. It also set into motion legal uncertainty around unfunded mandates, or rules that state agencies impose on municipalities without providing funds. Proposition 4 was later amended by Proposition 111 in 1990. Article XIII B “...attempted to restrict spending at all levels of government in California. The Appropriations Limit applies to ‘all taxes levied by and for’ a government entity” (CA City Finance, p. 168).

Even more severe limits were established by Proposition 218, a constitutional initiative passed in 1996 that limited how local governments can raise revenue. Article XIII and Prop 218 work together in two ways. First, they severely constrain the ability of local governments to raise property taxes, which is the primary way that cities self-finance. Second, these laws require that any ‘special tax’ to pay for programs must be approved by two-thirds of voters (Legislative Analyst’s Office 1996).

THE ORPHANED UTILITY: STORMWATER

Some essential services, such as drinking water, sewage systems, and garbage service, are exempted from these constraints as public utilities. In most locations, systems to capture or filter stormwater, agricultural and urban runoff are included in this category – but in California, these crucial services were not. Because of this oversight, stormwater is often called the “orphaned utility” (Farfaring 2015). In a fiscal environment where officials are often hard-pressed to deliver basic services and programs, providing adequate funding for stormwater capture is a major challenge. This issue has major implications for both water supply, and water quality.

Previous methods of dealing with stormwater, which focused on removing water as quickly as possible into channelized waterways and eventually the ocean, have resulted in a number of problems in southern California. These problems include water pollution, beach closures and advisories, urban flooding, and drinking water contamination. Environmental degradation of the rivers and harbors where stormwater conduits empty into the sea has plagued the region, necessitating costly after-the-fact cleanup efforts while missing an opportunity to recharge ground and surface waters.

In Los Angeles County, the flood control district operates a network of 27 spreading grounds and 100,000 catch basins connected to over 3,000 miles of storm drains that allow water to re-charge aquifers. Sixty-five billion gallons of rainfall in the Los Angeles River watershed are captured annually. Gary Hildebrand, deputy director of the Public Works department, told the *Los Angeles Times* that this captured water translates into about “...200,000 acre-feet of water – enough for 1.6 million people” (Sewell 2016).

However, even these impressive numbers represent a drop in the bucket – LA County only captures about 15% of their total annual rainfall, while hundreds of billions of gallons of stormwater carry trash, heavy metals and other contaminants directly into the ocean. At the same time, Los Angeles faces a 260 billion gallon projected shortfall in water supplies by 2025 (Farfing & Watson 2014; EPA 2015; Sewell 2016; LA Basin Plan 2014).

This dynamic is replicated throughout the state. The demands of aging infrastructure, climate change, increased demand, and historic drought mean that California faces an annual \$500-800 million dollar gap in stormwater funding, as well as another billion-dollar-per-year shortfall for flooding (Hanak et al., 2014). Proposition 1, a \$7.5 billion bond approved by voters in 2014, was actually a reduction of a previous \$11 billion bond (Prop 43), and arrived with \$2.7 billion earmarked for water storage – which critics alleged meant more ecologically devastating dams useful only for agricultural irrigation (Jao 2014b). Clearly, a wide array of solutions is needed to conquer the triple challenges of drought, flooding, and funding, particularly in light of the uneven distribution of costs and benefits among cities and regions in California.

Immediate steps to address issues of water supply and water quality under the umbrella of stormwater infrastructure are crucial to ensure water security in California.

WATER PRICING

In addition, Prop 218 dictates that local governments cannot impose fees for services that exceed the “actual cost,” without respect to future supply costs or past fixed costs. This limitation has a number of consequences, including the potential prohibition of increasing block tariffs (tiered pricing), with higher costs for greater usage. Such pricing is, however, the consensus choice to balance equity and conservation. In contrast, the private sector can and does use increasing block tariffs, as Prop 218 only applies to public sector agencies like cities and schools.

Income inequality is reflected and reproduced on a larger scale in water pricing. California water systems struggle to alleviate tension between the competing needs of two groups. Water suppliers need to ensure a steady source of revenue, which is best accomplished through a flat fee for water usage, while consumers are motivated to conserve by the flexibility of a consumption-based price. Generally, systems will split the difference with a base fee, plus a variable rate tied to usage. According to a UCLA Luskin Center for Innovation report:

The variable rate may be uniform or tiered, with best practice dictating that tiers increase the unit rate as customers pass certain consumption thresholds...an increasing block tariff structure. Most systems also design different tier thresholds for different classes of customers, such as single family residential, multi-family residential, commercial and industrial, to reflect their different expected reasonable use levels (DeShazo and McCann 2015).

This pricing approach, along with state-mandated water consumption cuts and an aggressive outreach program, have proven relatively successful. According to the Public Policy Institute of California, both agricultural and urban water usage subsided from a high point in the mid-1990’s back down to their 1960’s-era low. Considering the increases in population and production, the drop suggests a remarkable dedication to efficiency.

INTEGRATED REGIONAL WATER MANAGEMENT

The conceptual scaffolding for comprehensive management of regional water in California is the 2002 Integrated Regional Water Management (IRWM) Planning Act of 2002 (SB 1672). This legislation was designed as a framework to address interrelated, complex ecological problems. IRWM is an iterative and adaptive process that focuses on developing local capacity (sometimes called production capacity or the legal term “TMF capacity” for technical, managerial and financial ability to execute projects). Principal negotiations are face-to-face and processual rules are designed to build trust within Regional Watershed Management Groups (RWMGs).

Overall, the purpose of the act is to “...facilitate the development of integrated regional water management plans, thereby maximizing the quality and quantity of water available to meet the state's water needs by providing a framework for local agencies to integrate programs and projects that protect and enhance regional water supplies.” As of 2012, the California Department of Water Resources recognized 48 IRWM planning areas that span 87% of the state’s geography and 99% of its population. While it is a major part of the California Water Plan, after fifteen years, IRWM has not yet lived up to its lofty goals. For instance, despite requirements to identify and include disadvantaged communities, only about one third of the forty-five current IRWM plans in CA have “a significant level of DAC [disadvantaged communities] involvement” (Strategic Plan 2015; Cantú 2015).

VULNERABLE COMMUNITIES

To illustrate how DACs are left behind, a case study was developed on how race, class, and power intersect in the arena of drinking water provision (Balazs and Ray 2015). Tooleville is an unincorporated community of about 70 households, mostly Latino farmworkers, in the San Joaquin Valley. Tooleville’s groundwater supplies have exceeded safe contamination levels for nitrate and total coliform repeatedly over the last twenty years.

In order to neutralize bacterial loads, residents boil their tap water. Unfortunately, this merely intensifies the concentration of nitrate. Under the 1973 Tulare County General Plan, Tooleville has been explicitly denied access to water infrastructure and other public services. It has been

repeatedly rebuffed in attempts to join the nearby town of Exeter, which has a much greater supply of clean water.

Communities such as Tooleville must bear the dual costs of exposure and coping costs (in the form of paying for water supplies twice – first their tap water, and then for bottled water or household water filtration systems). Previous studies in the region have found higher rates of nitrates and arsenic contamination associated with communities of color and higher levels of poverty. This outcome is partly due to the historical relationship between agriculture and farm labor communities. However, these vulnerable communities also function as “canaries in the coal mine,” as nitrate contamination is increasing across the Central Valley (Balazs and Ray 2015).

Coping and mitigation form the second aspect of the problem. Inadequate infrastructure, poor information, and lack of funding all undermine the potential for mitigation at the state and county levels. Communities and households are left to find alternative coping strategies on their own. Water boards are staffed by volunteers and residents, who do not understand, and cannot comply with, regulatory standards. Due to the limited resource base, they are unable to hire professional operators.

TMF capacity is a particular problem for small water systems. Unfortunately, in California TMF capacity is also a prerequisite for state funding, leaving communities like Tooleville in an untenable position. Similarly, federal requirements that projects be “shovel-ready” essentially shut out water systems that lack planning expertise. Developing and supporting TMF capacity in small communities should be a critical part of re-writing funding policy. In addition, water system consolidation is needed that recognizes the underlying historical marginalization of racially, spatially, and economically vulnerable communities (Balazs and Ray 2015).

DELTA LEVEES

A different kind of vulnerable ecosystem is found in the Delta connecting the two major water distribution systems of the state: the federal Central Valley project, and the State Water Project. These two systems comprise a significant portion of the massive infrastructure for moving water from the northern part of California, where it is most plentiful, to the southern part of the state,

where agricultural and urban needs are concentrated. The waterway is protected by levees that are “...characterized by some levee engineers as ‘piles of dirt’...threatened by both earthquake-induced liquefaction failure and flood failures” from atmospheric storms on the Sacramento River (Foster and Radke 2015).

Should the levee system break down, the introduction of saltwater from the San Francisco Bay into the water supply for cities and farms throughout California would have catastrophic effects. One study found that a 6.5 magnitude earthquake near the Delta would knock out gas and power transmission lines, flood major transportation routes, interrupt water delivery, and require more than a year to come fully back online. Perhaps more troubling is the fact that a natural or manmade disaster is not a necessary prerequisite for levee failure. Burrowing animals and natural erosion were sufficient to breach one of the levees in June 2004 (Foster and Radke 2015).

The levees are essentially a historical artifact. A myriad of competing proposals to replace them with a more modern system – barriers, aqueducts, and tunnels, among numerous other schemes – have all failed due to the dynamic tension of competing interests. The stalemate has proven remarkably stable for the last sixty years, and therefore planning should incorporate lessons from this continued policy failure. Because agricultural, environmental, and urban interests prevent a long-term solution to the levee crisis and the costs of failure are so high, communication between flood-fighting groups is critically important. Federal, state, county, and city agencies must coordinate, not only among themselves, but with operators of privately owned infrastructure to fight damaging floods (Foster and Radke 2015).

TWIN TUNNELS

Governor Jerry Brown’s attempt to circumvent the fragile political and ecological balance of the Delta has evolved over the course of his administrations. Originally called the Peripheral Canal, the project later became the Bay Delta Conservation Plan, and finally the California Water Fix and Eco Restore. However, it is most commonly known as the Twin Tunnels plan. The California Water Fix calls for running two tunnels with a diameter of 40 feet each southbound for 30 miles, from the Sacramento River to existing state and federal pumps and aqueducts near the Bay area. The

project would cost \$17 billion over 50 years, in addition to the costs of paying back various water bonds (Sommer 2016).

Although Governor Brown has argued that the twin tunnels plan is helpful to the Delta, it is unclear that removal of more water from the ecosystem will have positive results. However, as the water needs of California cities and agriculture grow, the water districts funding the project will require an ever-greater supply from the northern part of the state. Some Delta activists have therefore called the plan “a straight water grab” (Boxall 2015). As California struggles to procure adequate water supplies, controversies around projects like the twin tunnels will likely continue to generate a great deal of heat, and very little light. It is also unclear that the water agencies involved will ultimately agree to pick up the costs, even if environmental objections are overcome.

GROUNDWATER BANKING

Daniel Wendell and Maurice Hall, scientists for The Nature Conservancy, have proposed groundwater banking as another possible fix to make California’s water system sustainable. The lack of regulation regarding groundwater extraction has led to a host of devastating impacts from land and water table subsidence, to disappearing streamflows and wetlands. Wendell and Hall argue that the effective management of groundwater, along with an understanding of the interactions between ground and surface water, are key parts of the solution (Wendell and Hall 2015).

Wells

Pumping wells disrupt the natural groundwater cycles of discharge and recharge. There are three primary sources of water for wells: underground ‘storage,’ a natural recharge area, or a natural discharge area. Each of these three sources has a set of consequences associated with the removal of water (Theis 1940, from Wendell and Hall 2015). Proper basin management includes assessing and ‘paying back’ the hydrological debt to surface water incurred when extracting groundwater. One necessary shift is from the concept of *safe yield*, which uses 100% of the recharged water in a basin and leaves nothing for the ecosystem, to *sustainable yield*, which

recognizes tradeoffs and accounts for environmental costs as well as economic costs (Wendell and Hall 2015).

Artificial Recharge

Artificial recharge, or increasing the yield and decreasing consumption of a groundwater basin, can be achieved through large-scale projects such as recharge ponds or injection wells. While this technique has been successful in combating overdrafts in Orange County and other basins in California, ultimately the high levels of demand exceed the supply of water for recharge and it is rarely economically feasible to recharge as much groundwater as a basin needs. Most water overdrafts are due to human uses, primarily for agriculture. Therefore, basin management must be addressed by the agricultural sector through efficiency measures. However, irrigation efficiency will not increase supply; managing surface water must account for the role of groundwater and the cyclical relationships between the two (Wendell and Hall 2015).

Streamflow Depletion

Groundwater pumping is pulling more than one million acre-feet from the Delta in the form of streamflow depletion. These streamflow effects are further exacerbated by the practice of groundwater-substitution transfer, where regions with abundant surface water, such as the Sacramento Valley, pump groundwater instead of using their surface supplies. It takes ten years for 75% of the streamflow to be 'repaid' from groundwater mining, and 30 years later repayment will still not have been completed (Wendell and Hall 2015).

Surface Water and Groundwater Extraction Regulation

In the absence of strong formal regulations to protect surface water from the effects of groundwater extraction, a number of mechanisms have emerged. Basin management objectives (BMOs) function as the primary guidelines for cooperative management, and the best way to move to sustainable yield models. Once again, the power of proactive and adaptive local management is emphasized, although a strict limit imposed from outside may be necessary. As in so many other cases, climate change will increase both the urgency and the difficulty of meeting these challenges (Wendell and Hall 2015).

“Consumptive use” refers not only to human withdrawals from groundwater basins, but also to natural processes such as evaporation and plant transpiration. In fact, some human uses like hydropower are nonconsumptive, in that water is returned to the system after use. However, most overdrafts caused by consumptive use are due to human uses, primarily for agriculture.

Therefore, the problems of basin management must be addressed by the agricultural sector through efficiency measures. This transitional period is likely to be fraught with difficulty and economic pain, but “The alternative is general failure of the groundwater supply to meet local needs...” However, irrigation efficiency will not increase supply; managing surface water must account for the role of groundwater and the cyclical relationships between the two (Wendell and Hall 2015, pp. 186-187).

Models of these interactions between ground and surface water in the Central Valley, and specifically the Sacramento Valley, estimate that groundwater pumping is pulling more than one million acre-feet from the Delta in the form of streamflow depletion (Wendell and Hall 2015, pp. 190-194). These streamflow effects are further exacerbated by the practice of groundwater-substitution transfer, where regions with abundant surface water, such as the Sacramento Valley, pump groundwater instead of using their surface supplies. It takes ten years for 75% of the streamflow to be ‘repaid’ from groundwater mining, and 30 years later repayment will still not have been completed (Wendell and Hall 2015, pp. 194-196).

In the absence of strong formal regulations to protect surface water from the effects of groundwater extraction, a number of mechanisms have emerged. Basin management objectives (BMOs) function as the primary guidelines for cooperative management, and the best way to move to sustainable yield models. Once again, the power of proactive and adaptive local management is emphasized. But a strict limit imposed from outside may be necessary. Basin prioritization should be based on potential impacts and maintaining healthy systems, rather than merely placing the most degraded basins at the top of the list. As in so many other cases, climate change will increase both the urgency and the difficulty of meeting these challenges (Wendell and Hall 2015, pp. 196-198).

CONCLUSION

Looking forward, significant developments in water policy are brewing throughout California. There is a growing sense among cities and governing bodies that meeting the challenges of drought, climate change, increasing demand, and hazard mitigation in the context of California's heavy-handed restrictions on funding sources will require an unprecedented level of coordination and creativity. Cities in California are attempting to reconceive their relationship to available water with a new perspective and set of goals.

As a technical project, the developments required are on a scale as grand as any mid-century modernist scheme. However, evaluation standards have evolved to incorporate environmental sustainability, a sense of place, and a renewed appreciation for environmental justice and ecological history. Multiple agencies are considering how to deconstruct their crumbling infrastructure back into wetlands, parks, and spreading grounds. The hope is that these water resilience plans usher in a new era that is self-reliant on local water, environmentally sensitive, and yet still fulfills the crucial function of flood control.

California has, according to many experts, reached "peak water," a fact which is highlighted by our institutional inability to deal with severe, increasing, long-term problems. Our water systems have evolved haphazardly, with the implicit assumption that supply is unlimited. We are only now coming to terms with the fact that our water sources are finite.

According to paleoclimatologists, the 150 years since Europeans have lived in California have been among the wettest in the last 10,000 years. Diversifying water supplies, particularly by revisiting pre-dam-and-aqueduct-era strategies for water provision, can greatly increase local water reliance and protect ecosystems. Through Integrated Water Management, sustainable agricultural practices, water capture and recycling, and institutional reform, California has the potential to transform its policies, restore its ecosystems, and nurture environmentally just communities.

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Chapter 2

Raising Revenue for California Transportation: Are Direct User Fees in our Future?

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California's transportation program has been in a state of financial crisis for decades. Our roads are badly in need of costly repair and replacement. A total of 68 percent of the state's roads are in "poor" or "mediocre" condition—the second worst percentage in the nation—and nearly one-quarter of its bridges are structurally deficient. Its interstates are the most highly travelled and most congested in the nation (TRIP 2016).

The average condition of road pavements has fallen so far that Caltrans believes without immediate preventative maintenance, any further deterioration of these "at risk" facilities will vastly increase costs for rehabilitation and reconstruction (Conference Committee on SB4 and AB3 2015). Facing expected annual revenues under existing funding programs of \$23 billion, and a need for annual revenues estimated to be \$57 billion more to correct serious and substantial existing deficiencies in the state's core highway infrastructure, plus another \$78 billion to fix local streets and roads (Lehrer 2016), the state took action in the Spring of 2017 by enacting SB1, the Road Repair and Accountability Act, which was approved by a slim margin and signed by Governor Brown.

SB 1 increases excise taxes on gasoline by 12 cents per gallon, on diesel fuel by 20 cents per gallon, replaces an additional sales tax on fuel by an excise tax indexed to inflation, and adds a new "Transportation Improvement Fee" to the cost of annual vehicle registration, ranging from \$25 to \$175 depending on the vehicle's value, and adds a new \$100 annual fee for electric vehicles which pay no fuel taxes (California Legislative Analyst's Office, 2017). To lessen negative public reactions, the new taxes and fees have starting dates staggered between November 2017 and July 2020. These actions have been so controversial as to spur citizen efforts to repeal them, and one legislator who supported the measure is under threat of recall. Yet, to many transportation analysts these apparently dramatic and sweeping measures are seen to be too little and too late.

The new taxes and fees will stem the current crisis for a while, as have past tax and fee increases. But they will leave the state's transportation revenue stream vulnerable to declines due to inflation, declining fuel tax revenue because of necessary reductions in fuel consumption to meet greenhouse gas program goals, and because the need for money rises as congestion worsens due to population and economic growth. Public transit programs in the state's urban

areas are short of funds to sustain operations. At the same time metropolitan areas are attempting to expand their systems through major capital investment programs, as is LA Metro, and older systems, such as BART, are in need of capital renewal.

The recent tax and fee increases respond to a crisis, but they do not resolve systemic challenges facing transportation funding over the coming decades. In this chapter I will examine one potential structural change in transportation revenue generation currently under careful consideration: direct user charges per mile of driving, sometimes labeled mileage-based user fees. There is a creative state trial and evaluation underway, but this initiative is also beset by technical challenges and vigorous opposition; its future is not at all certain. In order to understand the current “experiment” with direct user fees, I begin with an overview of transportation finance in California to provide the context for this initiative.

Raising Transportation Revenue in California

State revenues for transportation in California can be described as sitting on top of a three-legged stool, each leg of which is a stream of money that developed historically in response to funding crises in earlier times. The first leg of the stool is general revenues – for which transportation competes with other state programs for resources – often through bonded indebtedness in which the full faith and credit of the state backs bonds, the proceeds of which are used to build transportation facilities. A second leg of the transportation finance stool is user fees, exemplified by motor fuel taxes, which have for nearly a century been central to California transportation finance. Finally, the third component of the threefold composition of transportation revenue, of much more recent origin, is voter approved local option sales taxes at the county level, which fund transportation projects that are enumerated in the measures.

Of course, the state endeavors to maximize the flow of federal transportation funds into California, and it often manages to use the three principal sources of state revenue to create a required “match” for federal funds. However, I focus on state funding in this chapter. I examine the history of the three essential elements that constitute California’s current sources of transportation revenue and describe why they are likely to require adjustments in the near

future. Having so set the scene, I will look in some depth at the major new policy option – direct user charges – for generating additional revenue for transportation over the coming decades.

Early Transportation Finance in California: From General Funding to User Fees

In the horse and buggy years, streets and roads were funded through local taxes and special assessments on property because the adjacent property owners were thought to be the principal beneficiaries of increased access. These revenue streams gradually became inadequate as dramatic growth of motor vehicle ownership and travel necessitated construction of a statewide system of high capacity highways. Counties and cities financed local streets and roads, the state addressed major highways and legislators in the early years of state highways believed that the financial responsibility for longer road segments carrying intercity traffic should be borne by the public generally (Zettel 1946).

Responding to the inadequacy of state roads, in 1901, the Legislature authorized a continuous and connected state highway system to join county seats and major population centers. The voter-endorsed 1909 State Highway Act established a 34-route, 3,000-mile system financed by \$18 million in road construction bonds to be redeemed out of general revenues primarily from property and corporate taxes. The initial estimates proved inadequate and the state required additional highway bond measures in 1915 and 1919 to complete and upgrade the system; the additional bond measures increased total state debt to \$73 million (Garrett, Brown, and Wachs, 2016).

The state kept spending on roads. But it began to fall behind as it tried to meet its needs, and an early state transportation funding crisis had to be resolved. It soon became apparent that additional sources of revenue were required for maintenance and upkeep of the newly-improved roads. These needs created tension between those who favored sharing the costs among all taxpayers and others who felt that those using the roadways should be primarily responsible for their construction and repair.

Those supporting the new concept of greater reliance on user fees also disagreed as to whether some users, such as heavy commercial truck operators, should pay more than private

car owners. Burdened already by heavy debt, state policy shifted toward “pay as you go” funding for intercity highway improvements by adopting various user fees to support ongoing maintenance and road repair. For example, the Motor Vehicle Act of 1913 required annual vehicle registration fees that varied based on engine horsepower to reflect roadway damage by larger vehicles (Garrett, Brown and Wachs, 2016).

Because of the damage done by heavier trucks using roadways designed for lighter loads, California began collecting weight-based vehicle registration fees on commercial vehicles in 1915. The revenue was earmarked for maintenance, repair, widening, and reconstruction of local roads and state roads and highways, but not for retiring the highway construction bonds issued earlier, which remained a general obligation of all state taxpayers. The state supplemented its commitment to building and maintaining its roadways with federal funds following passage of the Federal Aid Highway Act of 1916, which provided up to \$10,000 per mile over five years to states for constructing rural post roads (Garrett, Brown, and Wachs, 2016).

As more families acquired cars and commercial travel grew, California’s state and local governments continued to borrow funds to keep up with rising demand. By 1923, state and county road construction debt reached \$114.2 million (Zettel, 1946). Most of the authorized bonds had repayment periods as long as 40 years, which was longer than the useful lifespan of many of the roads being constructed, so maintenance and expansion continued to strain state finances. Even as the state was spending a large share of its revenue to pay off long-term bonds for road construction and highway maintenance it was falling further into debt.

Responding to a pervasive sense of crisis, it emulated Oregon by adopting a motor fuel tax as a “user fee.” The 2-cent per gallon tax enacted as part of the 1923 California Vehicle Act was intended to be similar to a toll: the more one drove, the more one paid in fuel taxes. The fuel tax was less expensive to administer compared to tolls because it did not require building and staffing tollbooths, but it was also an “indirect” fee because one did not pay at the time and place of travel.

At the time, car-owning households and truckers still comprised a minority of all households and businesses. It thus seemed fair to charge road users more than the general

public. Fuel taxes were supplemented by fixed license and registration charges, as well as higher variable weight fees and business taxes on commercial trucks, which cause proportionately more damage to road surfaces than passenger vehicles (Garrett, Brown, and Wachs, 2016).

Collectively, three measures—the gasoline excise tax, increased weight-based vehicle registration fees, and a gross receipts tax—represented a comprehensive, though rather indirect, system of user finance designed to shift the fiscal burdens for maintenance and improvement of state and county highways away from property owners and businesses, and to allocate costs in proportion to road usage and wear. Having been established as a fundamental element of transportation finance in California, the gasoline tax, diesel fuel tax, vehicle registration fees, and truck weight fees all produced a steadily increasing stream of revenue as automobile and truck ownership and use grew steadily for decades through the present day. The tax rates and fees were raised periodically to reflect inflation but for nearly a century user fees have been the basic instrument of transportation finance in California.

Post-World War II Funding

Major system expansion needs after World War II led to long debates and another “crisis” led to increases in the tax rates in 1947. Inadequate revenues again led to arguments and compromises that raised the user fees in the early nineties. User fees, including enormous infusions of Federal revenue derived from national fuel taxes, largely financed the construction of California’s extensive freeway system in the postwar period, in part because the fees were raised and in part because traffic grew and steadily generated more revenue.

Even as user fees grew as the principal source of transportation revenue in California, the state continued to rely on general taxation to retire general obligation bonds which also continued in part to finance the system. While users are the direct beneficiaries of the transport system, every citizen benefits from goods movement, access to services, and a wide range of opportunities requiring efficient movement. Policymakers therefore feel justified in relying to some extent on the general taxes and fees levied against all citizens and businesses. And, as the state developed in more recent decades an intercity rail program and urban public

transit facilities, it was considered appropriate that road users not be solely responsible for transportation revenue.

In 1989, for example, the state faced a purported \$1.6 billion “shortfall” in the state budget (\$666 million of that in the highway program alone), and again confronted the challenge of upgrading its aging transportation system. The Legislature responded to that particular crisis by passing legislation known as the Blueprint for the Twenty-First Century. The Blueprint both raised user fees and authorized the use of general obligation bonds for transportation.

By raising taxes, the Blueprint provided \$18.5 billion over ten years for capital street and highway improvements as well as intercity and interregional rail projects. The law increased truck weight fees by 55 percent and doubled the state gasoline and diesel excise tax rates over five years from 9 cents per gallon to 18 cents per gallon by 1994. Since voter approval is required to raise state spending limits, the legislation also included a state constitutional amendment, enacted by passage of Proposition 111 in 1990, to authorize the tax increases (Garrett, Brown, and Wachs, 2016).

A centerpiece of the Blueprint was raising \$3 billion from the sale of general obligation (GO) bonds for intercity rail, commuter rail, and rail transit programs known as the Costa Rail Transportation Act. Voters in 1990 approved the first \$1 billion authorized in Proposition 108—the Passenger Rail and Clean Air Bond Act—along with Proposition 111. Voters also approved an independently-sponsored initiative measure on the same ballot, Proposition 116—the Clean Air and Transportation Improvement Act—which authorized nearly \$2 billion in additional bonds for intercity and commuter rail facilities.

Users who pay transportation fees, represented by the Automobile Clubs and the California Trucking Association, have aggressively sought to protect revenues generated by those fees from what is called “diversion” which is using those revenues for other purposes. Article XIX of the California constitution, for example, requires that per gallon transportation excise taxes on fuel be deposited in a special state account and to be spent exclusively on transportation programs. Proposition 42, enacted by the voters in 2002, also requires that state sales tax revenues on fuel be similarly reserved for transportation, though it allows some

diversion of those funds to other state purposes when a fiscal emergency is declared (Garrett, Brown, and Wachs, 2016).

Decline of Traditional Sources and Rise of Local Option Transportation Sales Taxes

Inflation-adjusted state and federal funding of transportation projects has been decreasing gradually for decades, and steady improvement in vehicle fuel economy means that per vehicle mile of travel the funding decline has been even greater. California's 18-cent per gallon base gasoline excise tax remained unchanged between 1993 and the recent passage of SB 1 in 2017. The federal fuel tax rate has not changed since 1991 and federal funding for transport has declined in relation to growth in population and GDP, even with several infusions of general fund monies to complement user fees by "bailing out" the Federal Highway Trust Fund as it has sunk into deficits (Wachs, 2017).

The average fuel economy rating of new vehicles sold in July of 2017 stood at 24.4 mpg, more than twice the rating of new vehicles sold in the nineteen seventies (University of Michigan Transportation Research Institute). Unless federal regulations are relaxed, a change that is under consideration by the Trump administration, light duty vehicle fuel economy is slated to reach more than forty miles per gallon by 2021 (US Department of Transportation). Reluctance is widespread among elected officials to increase fuel excise taxes in part because the base price of refined fuels has increased and motorists respond angrily to increases in price at the pump without knowing the proportion of the total price that consists of taxes.

Since the 1980s, the growing gap between transportation program needs and revenue has been partly met in California by accelerating adoption of voter-approved county sales tax measures for transportation. These taxes are the third leg of the three-legged stool that supports transportation finance in California. Local option sales taxes (LOSTs) for transportation are currently in place in 24 of California's 58 counties that house 88 percent of the state's population.

Figure 1 shows that they have been growing in number and importance since the first one was adopted in Santa Clara County in 1976. The measures enacted since the early nineties in these so-called "self-help counties" have had to be approved by two-thirds voter majorities

because of changes in the state constitution, but the higher hurdle has not slowed their adoption. Sales tax revenues dedicated to transportation today produce over \$4 billion per year for transportation construction and maintenance in the self-help counties (Wachs 2010).

Transportation sales tax measures produce essential revenue for the maintenance, operation, and expansion of some transportation facilities and services. But one important drawback of sales taxes is their “regressivity,” meaning that they collect larger shares of household income from lower-income households, on average, than from upper-income ones. While fuel taxes are similarly regressive with respect to income, their incidence rises and falls in proportion to fuel consumed – and thus in rough proportion to road system use. Transportation sales taxes, by contrast, are levied on nearly all consumer purchases, and their payment is less related to travel. This means that light users of transportation systems tend to pay more in transportation sales taxes per mile travelled than heavy users of transportation systems. In this way, transportation sales taxes might be seen as “doubly regressive” (Dill, Goldman, and Wachs 1999).

Despite their regressive nature, LOSTs for transportation have proven to be politically popular. Voters seem to prefer taxes levied in small increments (often a half-cent or cent per dollar) over a very large number of transactions. They favor such measures because projects to be funded by the LOSTs are specified in the ballot measures and their taxes fund improvements in their own communities rather than far away from those who pay the taxes. The measures also are popular because voters get to enact the projects through direct democratic action.

Most LOSTs in California are enacted for periods of fifteen to forty years, and voters also appear to value the fact that they need to be “reauthorized” where they are effective and that they can “sunset” if they are not. Only a few are permanent, including those in the state’s largest county, Los Angeles. These measures have often been debated due to concerns over their fairness—to light users of transportation systems, to low-income households, to minority communities, to users of travel modes that receive little funding, and across geographies within and between counties. But voters travel and they have demonstrated by their votes that they favor such measures.

California Considers More Direct Road User Charges

The sources of transportation revenue described above are all critically important to California's ability to finance transportation operations, maintenance, renewal, and system expansion. California's motor fuel taxes will continue to raise a major portion of needed revenue and for the foreseeable future will constitute the state's principal transportation user fee. The recent enactment of SB1, described earlier, increases expected revenue from user fees in the short run, and there likely will be gradual expansion of toll roads and congestion priced high-occupancy toll lanes.

In the medium to longer term, over one or more decades in the future, motor fuel tax revenues will continue to decline because of a transition to non-petroleum based sources of energy and reluctance to tax alternative energy for fear of slowing that transition. To the extent that the state can rely upon them, transportation agencies will continue to require allocations of general revenues, particularly to support public transit across the state because transit cannot generate sufficient revenues through fares to be viable. There are enormously important competing uses for state general revenues, however, which provide for the health, education and general welfare of the population.

For these reasons, general state revenues, while important, cannot be the primary source of revenue for transportation and vigorous competition for every dollar of general revenue insures that it cannot provide a reliable, predictable flow of funds to enable funding the statewide transportation system in a carefully planned manner over decades. Federal support for transportation is similarly declining and California has increasingly recognized that the state must rely on its own resources. Local option sales taxes have for several decades been filling growing gaps between estimated program needs and traditional revenue sources. County taxes are appropriately funding maintenance, operations, and expansion of facilities, including state facilities, in their own jurisdictions.

California requires additional revenue to address maintenance, operation, and expansion of state-owned facilities, particularly intercity projects and projects in many jurisdictions that are of significance to the entire state. The flow of funds established by LOSTs is critical in many counties, especially in Los Angeles where hundreds of billions will be earned

over coming decades. Other counties may well renew sales taxes when current measures expire. But it is not likely that county LOST taxation rates will increase dramatically nor that many additional rural counties will initiate new transportation sales taxes.

The California Road Charge Experiment

To explore whether California can continue to rely on user fees when the productivity of motor fuel taxes decreases over coming decades, the legislature in September 2014 enacted and the governor signed SB 1077. The new law required the state to design and administer a pilot program testing a road charge system in which vehicles pay for road use directly rather than through fuel taxes. The legislation required that the test employ a flat fee per mile of travel and that it not incorporate congestion pricing or fees that vary with vehicle type. The trial was required by the legislation to not charge participants real money, so it is best considered a simulation of a road charge in which participants received monthly bills by e-mail and paid using simulated credit cards. While other states, notably Oregon, have been conducting trials for some time, the California pilot test was the largest trial of direct user charges as yet conducted in the United States.

The California Transportation Commission and the State Transportation Agency designed the pilot test relying on the advice of a fifteen-member Technical Advisory Committee(TAC) that studied all aspects of road charging, emphasizing, as stated in the law, the protection of privacy, data security and exploring many technology implications. The TAC heard from many experts and interest groups and consultants conducted surveys and focus groups of citizens. Citizens were invited to volunteer to be participants, and efforts were made to recruit participants from every region, from all socio-economic groups, and fleet vehicles including heavy trucks. The program was widely publicized on web sites and through publications, for example, including *Westways*, the bi-monthly magazine published by the Automobile Club of Southern California.

The pilot program began in July 2016 and ended in March 2017. Over 5,000 vehicles participated and during the trial those vehicles drove some 37,258,866 miles. Drivers chose among six different methods for reporting their mileage. These methods included low-tech

options such as a mileage permit consisting of a sticker placed on the windshield, periodic odometer readings at state facilities, and higher tech options including monitoring travel by smart phone. Also included were installations of monitoring devices in vehicles' On Board Diagnostics (OBD-2) ports or use of telemetric devices already operational in newer vehicles.

Participants could choose to have their locations tracked or could opt for mileage reporting that did not keep a record of their locations. The several program options were managed by contractors to the state in order to test the ability of third party vendors to deliver the program. Drivers received monthly simulated credit card bills and could, if they chose to, access web sites that reported on the condition of their monitored vehicles and rated their driving in terms of safety and rapid accelerations. They could also receive other program updates electronically. Participants could access helplines if they had problems or questions and were surveyed at the middle of the trial and after it ended.

Figure 2 shows the types of vehicles that participated in the program, indicating that a large majority were private light duty vehicles. There was also participation of public and private fleets. Figure 3 shows that participating vehicles came from all parts of the state, although the north was overrepresented in relation to that region's proportion of state population and vehicle registrations. More than 90% of the participants resided in urban and suburban communities. Rural California was somewhat underrepresented. Similarly, men and persons having incomes above the state median were overrepresented among participating vehicle owners, though substantial proportions of participants were women and people who had incomes below the state median.

As noted in Figure 2, a small number of vehicles were registered in other states, enabling a test of the ability to track miles on state roads and to exclude mileage driven elsewhere. Vehicles participating in the program consisted of a wide range of makes and models. But fuel-efficient, electric, and hybrid vehicles were overrepresented in comparison with the proportion of the state fleet that they constituted. This outcome probably indicates that environmentally committed citizens were more likely to own those models, to be curious about mileage fees, and to volunteer to participate in the pilot test. The most common

participating vehicles included 290 Toyota Priuses, 231 Ford F-150 pickup trucks, and 198 Honda Civics.

The pilot test concluded on schedule and was deemed a success by the TAC. Very few participants dropped out of the trial, and those who did had reasons such as illness, becoming carless, or moving out of state rather than dissatisfaction. Figure 4 shows that some 62% of pilot test participants chose to have their locations tracked and at the close of the pilot 86% of all the participants reported that they were satisfied with their mileage reports. Furthermore, some 85% of those participating in the program reported being satisfied or very satisfied with the trial. Seventy-three percent reported at the end of the program that they regarded direct user fees to be “more fair” than a gas tax (California Road Charge Pilot Web Site). The California Transportation Commission and the State Transportation Agency, with the participation and guidance of the Technical Advisory Committee, are presently (in September, 2017) preparing a report to the state legislature regarding the outcome of the pilot test.

Next Steps for California Road Charge Programs

It appears that the trial of direct road user fees was a technical success, but the future of direct road charges in California remains highly uncertain and the recently completed trial is at best an early milestone on a path that will unfold over decades. Responding to growing national interest in direct user charges as potential successors to the venerable motor fuel user fee, the most recent federal transportation legislation the Fixing America’s Surface Transportation (FAST) Act, enacted in late 2015, appropriated \$95 million for states to continue trials, tests, and demonstrations of direct road charges. California was awarded \$750,000 in late 2016 to advance the concept further by field testing a program that would charge a direct road charge based on miles driven but collected at fuel pumps when vehicles purchase fuel (Federal Highway Administration, 2016).

Because today the excise tax is part of the fuel purchase price, the concept to be tested would facilitate a transition to a new form of charging using electronic communication between the vehicle and the fuel pump to cancel the tax on the fuel for participating vehicles. It would instead charge them for miles driven since their last fuel purchase. This process would be

convenient for drivers who own vehicles that use petroleum fuel, but would require an alternative for electric or hydrogen fueled vehicles.

California is also actively participating as one of fourteen states that together formed the Western States Road Use Charge Consortium (RUC West). RUC West received another \$1.5 million in federal funding. As trials proceed in Washington, Oregon, Nevada, and other nearby states as well as in California, this collaborative intends to share information and compare lessons learned. Most importantly, it would insure that the implementation of any future programs is operationally compatible across many states.

Is Direct User Charging for Roads in California's Future?

In the early sections of this chapter I showed that transportation policy in California has limped from one funding crisis to another for more than a century. Each time there was too little money to provide for road and transit programs considered to be important, the legislature acted to address the immediate need. And each time it fell short of addressing long-term requirements. Before many decades had passed, a new funding crisis arose and a new short term fix was developed.

The motor fuel tax proved to be the most long-lived transportation funding instrument, but not because it was planned for that purpose. Because travel grew relentlessly for a century and the vast majority of vehicles were powered by petroleum based fuels, the revenue stream grew steadily even when the per gallon tax rate was raised infrequently and failed to keep up with inflation. Those revenues were the centerpiece of transportation finance in California for nearly a century, complemented by general revenues, and more recently by county-specific voter initiated sales taxes.

With the motor fuel tax gradually losing its capacity to remain central to California transportation finance, the state today is exploring an alternative policy option – direct user charges, which are also referred to as mileage based user fees. Rapid advances in satellite technology, vehicle tracking, and telecommunications make this method of charging for road use increasingly technically feasible. So far the technical issues that would stand in the way of a transition to mileage charges are many, but they are being addressed. The political

challenges are far more numerous and, despite the technical progress, it seems almost impossible to forecast where the current course will lead.

Among the motivations for the California road charge pilot program was the reluctance of the state legislature to increase the state motor fuel tax rates on gasoline and diesel fuel. Legislators who enacted SB 1077 were facing a crisis in transportation finance as report after report documented the declining condition of infrastructure and California continued to reduce spending on road maintenance. But, as noted earlier, by a margin of just one vote, the state legislature did finally enact a variety of user fee increases in April 2017, to be phased in gradually over the next several years. This action was extremely unpopular and has prompted a recall effort against one state legislator and a variety of calls for the repeal of these tax increases.

Among the responses to the tax increase could be a lessening of support for the direct road charge program. The increase in user fees imposed by SB 1 is seen by some voters and legislators as all that is needed to address the most recent in a long series of funding crises. While the increased funding provided by SB 1 is desperately needed, long-term increases in vehicle fuel efficiency and even moderate rates of inflation guarantee that the revenue stream will need to be increased in the longer term.

The single biggest hurdle facing direct user charges is that they are almost universally unpopular. Californians strongly favor increased spending on road repair, but are split on higher fuel taxes and most do not support an alternative new tax levied per vehicle mile of travel (DiCamillo and Field 2015). In surveys and focus groups, citizens repeatedly reveal that the vast majority of Californians do not know that they pay for transportation through motor fuel taxes and an even larger proportion of motorists are not aware of the per gallon rate of taxation that they pay for road use (Agrawal, et al, 2016).

When asked whether charging for road use would be a fair or appropriate method to finance road repairs and expansion, a majority of respondents in virtually every survey and focus group answers in the negative. On the other hand, after they are informed of the fact that they currently pay for roads largely through fuel taxes and after direct user charges are described and explained, attitudes shift rapidly toward supporting them (Agrawal, et al, 2016).

I personally have observed several focus groups in which such a reversal of opinion took less than ten or fifteen minutes. Because citizens are largely unaware of the way roads are financed and their opinions are malleable, an important purpose of the road use charge pilot program and of additional ongoing experiments and demonstrations, is quite simply to familiarize the populace with the concept because familiarization is so highly correlated with changes in attitude.

Citizens and a wide variety of organized interest groups are understandably and appropriately concerned that road charges threaten individual privacy and that breaches of data security are possible. Participation in trials has so far been entirely voluntary and no actual fees have been levied. In these trials privacy and security have not adequately been tested and further trials must also address this critical challenge.

Motor fuel taxes have extremely low costs of administration, often estimated to be less than one percent of the revenue collected. The taxes are levied at wholesale distribution points, of which there are less than a dozen in the state. The taxes are passed along to the motorist through retailers and the fuel is dyed in color when the tax is paid to help avoid fraud.

Presently, the cost of administering direct user charges is a far larger proportion of the revenue collected, though the estimated cost is falling rapidly over time as the technology is improved (Sorensen, Ecola, and Wachs, 2012). Because the vendors who implement direct road charges also offer closely related services like mileage based auto insurance and navigation assistance, there is reason to believe that a lively market for “value added services” can make direct user charges more economical over time. Another critical reason to continue trials and assessments is to determine whether implementation costs can indeed be lowered significantly.

The Future of Transportation Funding in California

The capacity to charge each motorist for travel on a particular facility at a specific time promises to encourage the use of prices more comprehensively as an instrument of transportation policy, as has been advocated by transportation scholars for decades. Direct charges would make it possible to charge higher per mile rates for travel on congested facilities

at peak hours and doing so could dramatically increase our ability to manage congestion. Direct user fees also could provide a path for instituting lower charges for vehicles producing fewer air pollutants and greenhouse gases than for gross polluters.

Similarly, we today distribute state motor fuel tax revenues to counties and municipalities based on decades-old formulas that include county population and miles of roadways, and we could in the future know on which roads travel took place and distribute revenue to jurisdictions within the state far more precisely on the basis of time and place of travel. I think of direct user fees as a new “architecture” for charging, giving governments the capacity to develop far more subtle and nuanced strategies for implementing environmental and traffic control strategies than are currently in place.

Proponents of further development of such fees often cite these possibilities as benefits, while opponents decry them as big government intruding further into the lives of citizens and advocate policies that would forbid taking such steps. At the moment, the opponents clearly dominate the debate and further trials and evaluations continue to be the most logical approach to clarifying the potentials and problems of direct charges. The political debate engendered by the polar positions is still in early stages of development and it is impossible to predict with accuracy where it will end.

There are of course other closely related and enormously important transportation policy questions that will simultaneously determine and respond to the state’s transportation revenue burdens. Some state programs seek to reduce travel because of its negative externalities including congestion, air pollution, and greenhouse gases. Others promote mobility because of its positive externalities including construction jobs and the employment generated by transportation dependent industries like trade at the ports and retailing.

Whether or not highways become more automated and vehicles more autonomous over the coming decade will of course impact revenue and expenditure patterns, as will the future of investments in alternatives to the automobile, from statewide high speed intercity rail, to local choices regarding public transit, and investments in cycling. Whatever paths move transportation policy forward, however, more revenue will be required. Clear articulation of the

options and their respective costs and benefits will help legislators and other policymakers make decisions that are informed by information and understanding.

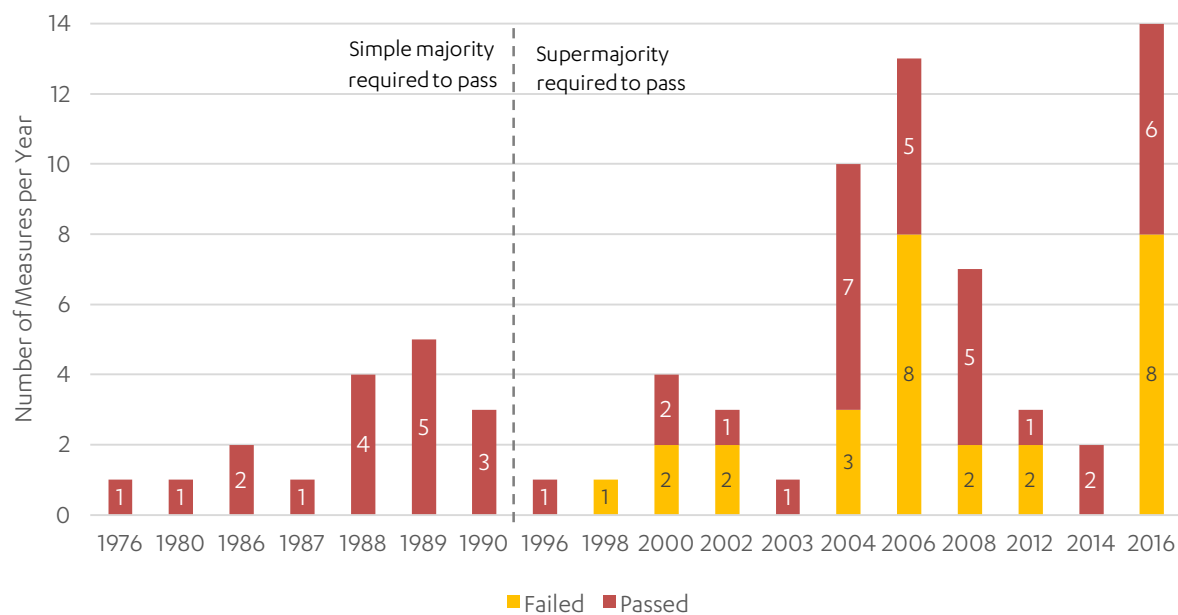


Figure 1. Number of Passed and Failed Local Option Sales Taxes in California by Year (Source:

5000+ vehicles statewide

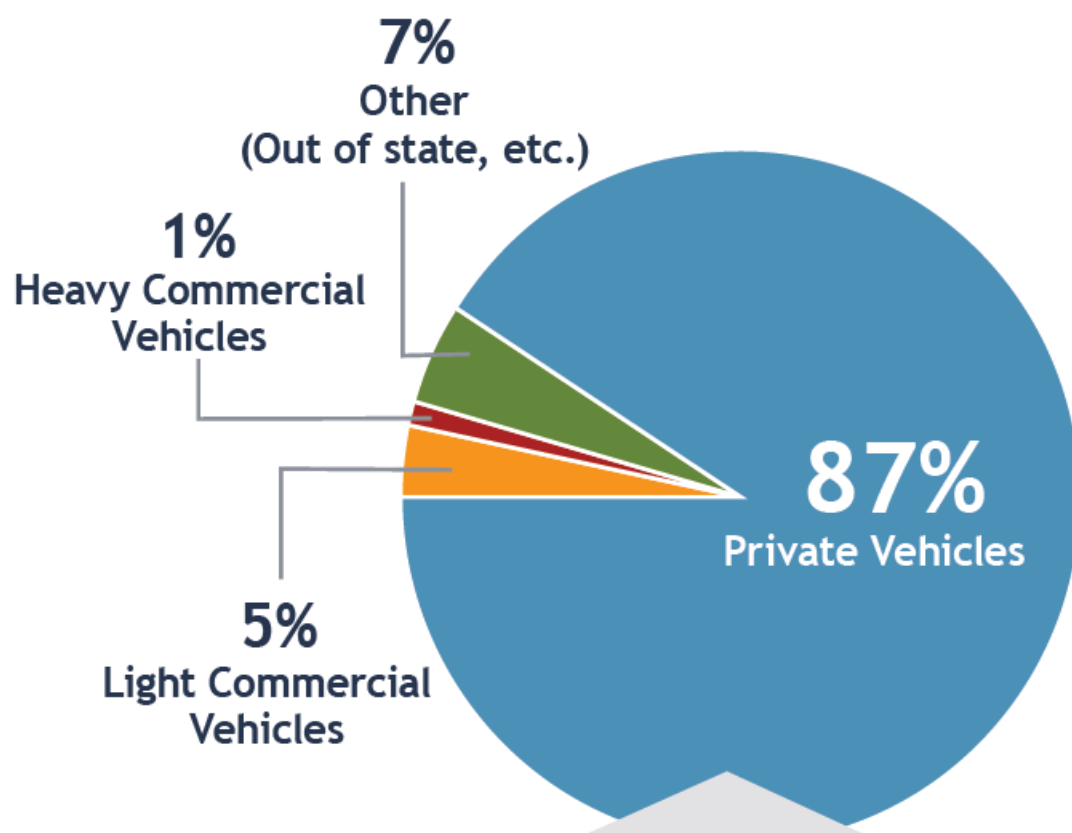


Figure 2. Proportions of Vehicles Participating in the California Road Charge Pilot.

Private Vehicle Enrollment (By Region)

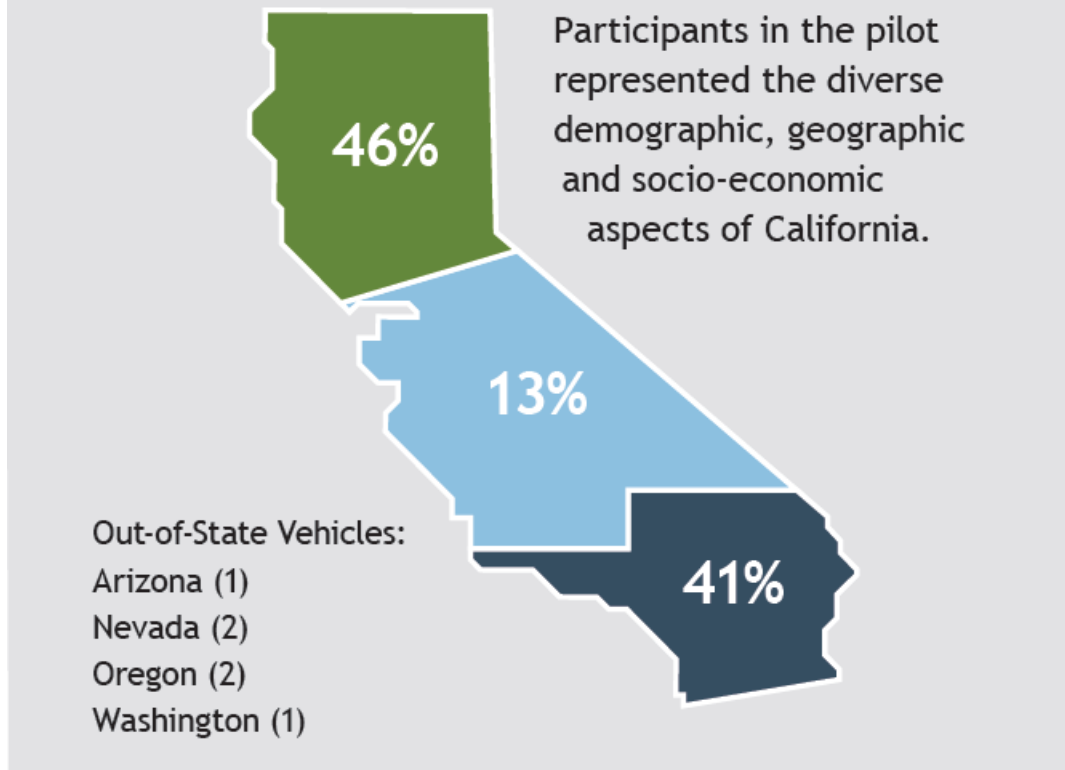


Figure 3. Geographic Distribution of Vehicles Participating in the California Pilot Test

6 mileage reporting methods



Note: The heavy vehicle mileage meter used by our heavy vehicles represented in the pilot makes up 1% of the total of 5,129 enrolled vehicles.

Figure 4. Volunteers mostly chose higher tech options for mileage reporting which revealed their locations.



Figure 5. Indicators that the pilot test was considered successful and indicated directions for future research and analysis.

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CHAPTER 3

If Not About Legacy, Then About What Else? Jerry Brown's 2017-18 Budget

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“I’m not here about some cockamamie legacy that some people talk about. This isn’t about me. I’m going to be dead.”

Jerry Brown urging legislative vote
in favor of his cap-and-trade program¹

Every level of government has a budget and a process by which that budget is put in place. State and local governments largely set their priorities through their budgets. Although there are many things that governments do that are not considered fiscal matters, e.g., defining crimes and penalties, or establishing environmental rules, even such issues often have some expression in the budget. For example, crime definitions and penalties involve the costs of law enforcement, funding facilities for incarceration, and sometimes sources of revenue (fines). Environmental rules also require funding of enforcement. In some instances, these rules may provide revenue, e.g., the California cap-and-trade program (about which more will be said below).

As has been discussed in the budget chapters of previous editions of *California Policy Options*, California Governor Jerry Brown, despite his protestation quoted above, *is* concerned about his “legacy.” Brown will have served four terms as governor when he steps down in January 2019, more than any previous governor and – unless term limits are ended – more than any future governor. Uniquely, Brown – who was first elected in 1974 – split his four terms, two in the 1970s and early 1980s, and two beginning in 2013 after his election in November 2012. Perhaps in his youth Brown wasn’t thinking of legacy, although even then he likely wanted to leave his mark as someone who was “different” from conventional politicians. At this writing Brown is 79 years old and, with age, legacy has become more pressing.

What are the legacies Brown would like to leave? And what are the prospects he will be able to do so? As we review the making of the 2017-18 budget in this chapter, keep that question in mind. The 2017-18 budget won’t be Jerry Brown’s last; he will do another for 2018-19. But 2017-18 will be the last budget completely within Brown’s term of office. The next one’s second half will be a legacy Brown leaves to his successor.²

¹Quoted in Jonathan J. Cooper, “Gov. Brown Makes Dire Plea to Save California Climate Law,” *Associated Press*, July 14, 2017. Available at <https://apnews.com/fb94b2fdad3047a0a7e457a0f4ca6433/California-governor-scrambles-for-support-on-climate-deal>.

² This chapter reflects information available until August 2017. Later developments are not reflected.

Remember, too, that unlike other California governors, Brown has to compete for his legacy with the ghost of his father. The difference is that Jerry Brown's dad was also state governor. And the elder Pat Brown is remembered for the Master Plan for Higher Education and the related expansion of the state's higher ed systems (including construction of new campuses), for the expansion of the freeway system, and for the creation of a major state water project.

Also noteworthy is what has been *forgotten* about Pat Brown. Nowadays, few would recall or know that Pat Brown left a budget crisis to his successor (and to the man who beat him in his bid for re-election to a third term in 1966), Ronald Reagan. Nonetheless, Pat Brown's son took the memory of his father's budget crisis to heart and tried from the beginning of his political career to maintain a position of fiscal prudence.

What Will Future Californians Remember?

"What am I, 79? Do I have five years more? Do I have 10 years more, 15? I don't know, 20? I don't even know if I want that long."

Jerry Brown reflecting on climate change and cap-and-trade³

Jerry Brown has two legacy capital projects, both of which he inherited from the previous regime of Governor Arnold Schwarzenegger. One is a high-speed rail system, similar to the "bullet" trains of Japan and Europe, that would eventually connect the Bay Area with Southern California. Brown managed to move that project from the drawing board to actual construction of a segment in the Central Valley. Whether the high-speed rail ever will be completed, however, is uncertain. Completion could depend on continued federal funding which, under the current Washington administration, seems dubious. If federal funding is not forthcoming, some other source will be needed, perhaps private investment which so far has yet to materialize. As it is, the main alternative funding sources are a bond issue that voters enacted and revenue from the state's cap-and-trade program which aims at cutting greenhouse gas emissions.

Brown's other big capital project is the construction of twin water tunnels in the Bay Area that are supposed to have environmental benefits while offering provision of a more secure water supply to the south. There is controversy about both elements and the project as yet has no funding and no construction, although it has survived some regulatory and litigation hurdles. At this writing, not all of

³Quoted in George Skelton, "As cap-and-trade evangelist, Gov. Brown shows he's the most effective politician Sacramento has seen in a long time," *Los Angeles Times*, July 17, 2017. Available at <http://www.latimes.com/politics/la-pol-sac-skelton-cap-trade-jerry-brown-20170717-story.html>.

the key public water authorities are clearly behind the plan; whoever becomes governor when Brown retires – assuming he or she supports the tunnels – will need the major water authority players to back the plan. (So far, the announced candidates have all been male.) In short, in terms of physical infrastructure, Jerry Brown’s water legacy is especially uncertain.

Brown has also moved toward two policy *ideas* – as opposed to physical infrastructure – as legacies. One is promoting rules and regulations to limit climate change. Although California is too small by itself to make a major dent in world climate change, Brown sees California as setting an example, particularly in the face of opposition to climate policy by the Trump administration. The climate issue and the related cap-and-trade program are in part linked to the high-speed rail, which – as noted above – has been receiving funding from that program.

The other concept/idea legacy Brown wants to leave is building a fiscal cushion for the state to deal with the ups and downs of the business cycle. California has had two major budget crises since the turn of the 21st century. Brown, particularly when in the midst of budget proposing and enacting, pushes the idea of prudence in fiscal affairs which, as noted earlier, has long been part of his career. More tangibly, the enlargement of the state’s “rainy day” fund has been an objective. Like the infrastructure legacies, both the climate change and the rainy day ideas date back to the Schwarzenegger era.

The contemporary environmental regime of climate-related regulation really starts with AB32, a law passed in 2006.⁴ Then-Governor Schwarzenegger received much praise for California’s climate policy – particularly because California was moving ahead despite the decidedly unenthusiastic George W. Bush administration in Washington. Schwarzenegger, as one of his first major moves upon taking office in a 2003 recall election, proposed and then induced voters to create a state rainy day fund (“Budget Stabilization Account” or BSA) in 2004. But he never was able to put and then retain significant money in it.⁵ Whatever went in was drained out quickly by the Great Recession. Brown, in contrast, has built up the reserve, also with voter support. But his progress in building up state financial reserves is more qualified than his rhetoric might suggest.

Budget 101

Before we look at detailed budget data, we need a bit of Budget 101. State and local governments – including the State of California – typically have a General Fund which you can think of as a “checking

⁴See <https://www.arb.ca.gov/cc/ab32/ab32.htm>.

⁵Proposition 58, approved by voters in 2004 as urged by Governor Schwarzenegger, created the BSA. See <http://vigarchive.sos.ca.gov/2004/primary/propositions/prop58-arguments.html>.

account” for ongoing expenses. Revenues go into the General Fund, mainly from taxes; state expenditures for various programs go out. The major taxes in the California case are the personal income tax (about 68% of General Fund revenue), the sales tax (20%), and the corporate tax (8%). Together, these taxes accounted for 96% of total receipts in fiscal year 2016-17.⁶

These taxes, like most taxes, are sensitive to the business cycle. During Good Times, state residents are working (and thus receiving income), consuming (and thus paying sales tax), and corporations are generally profitable. During Hard Times (recessions), incomes are reduced, consumption is cut back, and profits decline or may even become losses. However, California’s income tax receipts are also reflective of the state of (often volatile) financial markets, particularly the stock market.

Because the state is highly dependent on the income tax, and because the income tax is progressive, income recipients in the upper brackets pay a disproportionate share of receipts. The top 1% of income recipients – whose taxable income is especially linked to capital gains and losses in financial markets – paid close to half of the income tax in recent years. The top 20% of taxpayers paid around 90%.⁷ Just over half of the disbursements in 2016-17 from the General Fund went to education at all levels, and enrollment in schools and universities is not volatile or especially sensitive to the business cycle. The inflows, outflows, and stock of individuals in state prisons are not business-cycle sensitive. In short, California has a state government whose revenues are volatile but whose programmatic obligations are steady, a formula for potential budget crises.

Apart from pension trusts, there are numerous funds outside the General Fund that are earmarked for special purposes. These outside funds may receive money from designated taxes or fees or other sources. The largest deal with transportation and receive revenues from the gasoline tax and other motor-vehicle related taxes and fees that are used for road repair, public transit, etc. Typically, however, when you hear about the state budget, the discussion is of the General Fund.

Under the state constitution, the legislature must enact a budget for the coming fiscal year (which begins each July 1) by June 15. At one time, before Jerry Brown began his second iteration as governor, a two-thirds vote was needed to pass a budget. Particularly during economic slumps, this requirement led to delays beyond July 1, sometimes substantial, in enacting a budget. When the state entered a fiscal

⁶The figures are on a cash basis. See Table 1 for source.

⁷Data are available from the California Franchise Tax Board at Jim Miller, “Almost half of California 2014 income taxes paid by top 1 percent,” *Sacramento Bee*, April 27, 2016. See <http://www.sacbee.com/news/politics-government/capitol-alert/article74271532.html>.

year without a budget in place, the status of various programs was put in doubt and some were not funded. The outcome regarding what was funded absent a budget was largely based on court decisions. Voters, who were increasingly upset by the drama that ensued from delayed budgets, changed the process to allow a simple majority to pass a budget, essentially ending the delays. But raising state taxes by the legislature still requires a two-thirds vote. Voters, however, can raise taxes via the initiative process by a simple majority.

Under its constitution, California is not supposed to borrow to finance ongoing expenses. Borrowing is supposed to be reserved for capital projects such as transportation infrastructure, water facilities, etc. There are various forms of borrowing. General Obligation (GO) bonds are backed by “the full faith and credit” of the state. Voters must approve such bonds, which can be put before them by the legislature or via the initiative process. Of course, when bonds are floated (sold in financial markets), the state must pay interest and ultimately repay the principle of the loan. Bond money is not free, although voters may not always perceive the obvious point that future tax revenue will be needed to pay off the bonds.

Apart from GO bonds, state agencies may issue lease-revenue bonds whose debt service is paid from the appropriations received by those agencies and from other receipts they may have. Ultimately, the rate of interest that has to be paid is determined in the bond market. But bonds are rated by three major private rating agencies which are supposed to assess the level of risk entailed. The lower the rating, the higher the interest rate that typically must be paid on the bond to compensate lenders for the risk.

There are exceptions to the constitutional restriction on borrowing for ongoing activities. Within a fiscal year, the inflow of revenues may not match the outflows for seasonal reasons. Income taxes are due in April for example. Consumption expenditures (and thus sales tax receipts) tend to increase in the Christmas season. Court decisions have allowed the state to borrow short-term, mainly within the fiscal year, if it doesn’t have the cash needed to meet obligations. The short-term borrowing is done through flotation of “Revenue Anticipation Notes” (RANs). In recent years, however, such RANs have not been needed because the state has adequate cash on hand. In contrast, during severe budget crises, the state sometimes has borrowed short-term over periods that bridge two fiscal years through “Revenue Anticipation Warrants” (RAWs).

In the most extreme situations, California has temporarily withheld payment from suppliers to the state that are owed money and from those taxpayers due tax refunds. Rather than cash, it has given them

“registered warrants” in place of cash and then redeemed the warrants when cash was available. The last time this situation arose was in 2009 in the aftermath of the Great Recession. California has never defaulted on its GO bonds, lease revenue bonds, RANs, or RAWs. Although some observers might argue that handing out registered warrants rather than cash is *de facto* “bankruptcy,” there is no legal mechanism for state governments to go bankrupt.⁸ (Local governments in California can go bankrupt and some have over the years.)

A Look at the Cash Numbers

Now that we have had a brief review of budget practice, we can look directly at one version of the state budget for the fiscal year 2016-17 and consider some history. Budget accounts come in two “flavors.” One is direct cash inflows and outflows, unadjusted for any timing. It is often argued that cash flows can be misleading since timing can produce odd results. For example, there is little difference in practice if the state receives a tax payment on June 30 or on July 1 of the following fiscal year. But if done on a cash basis, the payment will appear either in one fiscal year or another. Accountants will often prefer adjusting such payments so that they are recorded based on the year in which they are *due* rather than the accident of when they are *received* – so-called “accrual” accounting rather than cash accounting.

Official state budgets that are enacted by the legislature are based on accrual accounting. The problem is that once there is a deviation from cash, the accounts can be “adjusted” for cosmetic reasons. There is a degree of discretion in the specifics of accrual methodology. In contrast, cash is cash. So let’s start with a cash accounting view of the state budget. The cash accounts of the state are maintained (and published) by the elected state controller. Some things you may see in the controller’s numbers may surprise you.

Take a look at Table 1. It shows the budget in cash terms from the Brown budget for 2012-13 through the Brown budget for 2016-17 (the year ending June 30, 2017). The controller reports two reserves: the Special Reserve for Economic Uncertainties (SPEU) – which you can think of as reflecting the balance in the state’s checking account – and the Budget Stabilization Account (BSA), popularly known as the “rainy-day” fund. If money is being added to the two accounts combined, the budget can be said to be in *surplus*. (More is coming into the state treasury than is flowing out in the taxes and expenditures of the General fund.) If the reverse is true and the sum of the two reserves is declining, the state’s General

⁸Some local governments did enter bankruptcy in the aftermath of the Great Recession, notably the City of San Bernardino and the City of Stockton. During the mid-1990s, Orange County, California entered bankruptcy after some ill-considered speculation by its treasurer of financial derivatives.

Fund is in *deficit*. Put another way, good usage links surpluses and deficits to inflows and outflows in a defined period of time, typically a year. (Sadly, in Sacramento-speak, good usage is not always what is followed.)

In the aftermath of the Great Recession, the state had run big deficits so that its reserves were negative (its General Fund was net in debt at the close of fiscal years, something that is not supposed to happen). To pay off that debt, the General Fund had to run a series of surpluses sufficient to pay off the imbalance. Thus, the General Fund in 2012-13 was in surplus, but still in debt. (The surplus reduced the net debt, but didn't fully pay it off.) Following his election in 2010, what Brown did – after a one-year delay that we don't have to rehash here – was to induce voters to enact some temporary taxes (in November 2012). He also came into office at a time of gradual economic recovery, and recoveries add revenue. Finally, he limited the amount of state spending relative to what the legislature would otherwise have desired.

These three steps pulled the general fund out of debt and built up a combined reserve. Brown persuaded voters to start putting money into the rainy-day fund (Budget Stabilization Account) in November 2014, the fund that Governor Schwarzenegger was never able to implement successfully. The fund now receives money by a combination of formula and what the governor is able to persuade the legislature to add over and above the formula.

However, some of what was built up in the reserves was drawn down by two consecutive cash deficits in 2015-16 and 2016-17, a development that does not accord with Brown's hoped-for legacy of fiscal prudence. That leaves him two more budget years, 2017-18 and 2018-19, to cement a fiscal legacy (or not), at least on a cash basis. Note again that the budget for 2018-19 will essentially be an inheritance of his successor, whose first term will begin in the middle of that fiscal year (January 2019). It might also be noted that the numbers look different when on the official accrual basis, something that we will get into below.

It would be nice to have an annual reconciliation of the two accounting methods: cash vs. accrual. Sadly, and this is a decided deficiency in state budget practice and much-touted "transparency," there is no reconciliation available. There are cash accounts and there are accrual accounts, each the seeming property of a different government entity. The cash accounts are the province of the elected state controller. The accrual accounts belong to the Department of Finance which reports to the governor. It doesn't have to be that way, but that's the way it is.

Two charts, also on a cash basis, provide additional insight into recent budget history. Chart 1 shows “unused borrowable resources” as a percent of General Fund receipts at the end of fiscal years from just before the Great Recession through 2016-17. Chart 2 shows unused borrowable resources on a *monthly* basis for fiscal year 2016-17 in billions of dollars. So the initial question regarding both charts is, what are those unused borrowable resources?

As noted earlier, the state has many funds outside the General Fund. There is cash available in these outside funds that can be borrowed by the general fund when it is in the red. The legal ability of the controller to undertake such internal borrowing is ultimately determined by the legislature. And note that this type of internal borrowing has consequences. To the extent that an outside fund that is earmarked for some public purpose, but is filled up with IOUs from the General Fund rather than with cash, it lacks money needed to fulfill whatever purpose it is supposed to accomplish.

Nonetheless, the outside funds represent a considerable cushion for the General Fund. In a sense they are a hidden reserve which is larger than the official reserves. Note on Chart 1 that unused borrowable reserves relative to receipts reached a low point at the end of 2008-09, just before the state’s cash crisis where it was handing out IOUs (registered warrants) instead of paying all of its bills. Chart 2 shows that the mismatches in timing between tax receipts and expenditures within a fiscal year can result in considerable fluctuations in unused borrowable resources. The state started fiscal 2016-17 with about \$35 billion in unused borrowable resources. By the end of December 2016, it had only a little over \$20 billion. The drawing down of almost \$15 billion is a big swing in state financial assets. Nonetheless, the \$20 billion remaining was a sufficient balance to allow the state to keep paying its bills and to do so without any external RAN borrowing.

The fact that the California public perceives that things are now going relatively smoothly in Sacramento owes much to the fact that we have not had a budget crisis since early in Jerry Brown’s second iteration as governor. And much of the reason for that absence of crisis is that the total cash cushion for the state has been growing. A good deal of that growth is simply a reflection of the fact that the state has been in an economic recovery mode since 2009, a recovery that is putting money into virtually *all* state funds that receive tax revenue, not just the General Fund. The increase in those receipts adds to the overall state budgetary cushion.

Official Budget Numbers

As noted, when you look at the official budgets, as passed by the legislature and signed by the governor, you will not find any official reconciliation between the cash accounts and the accrual accounts. In very loose terms, there are on Table 2 some notable surpluses (growth in reserves) on an accrual basis in earlier years and not so much more recently. In that very general sense, there is *some* accord between cash and accrual. It would be nice – more than nice in fact – to be able to see an official reconciliation, but one is not on offer in Sacramento. Nor does anyone in authority seem to feel a need for such an accounting.

To the extent that the news media cover state fiscal matters, there tends to be an uncritical reproduction of official data. In good times, there is enough of a cash cushion so that the state can get along without any sign of crisis. In bad times, such as in 2009, when the controller reports that cash is running out, problems arise. California may not be worse in that regard than other state and local governments around the country. But that fact does not mean that improvements would not be desirable.

Since the official accrual budgetary figures are what we have, at this point we shift to those numbers to trace the development of the 2017-18 budget. Table 3 shows the basic stages of the budget process which we will develop in more detail in what follows. But basically, budgets emerge in a series of steps. In the fall, the Legislative Analyst's Office puts out a projection of what would happen in the next fiscal year if the budget continued on autopilot, i.e., without modification. In January, the governor submits a formal budget proposal for the next fiscal year (beginning July 1). The proposal may contain new programs, cuts in programs, and other deviations from just continuing on the present path. Typically, there is a news conference that accompanies the proposed budget with the governor and the state's finance director making the presentation and answering reporters' questions.

After receiving the governor's message, the legislature begins a period of hearings on various aspects of the budget and the governor's proposal. In mid-May, the governor submits the "May Revise," a modification of the original budget that reflects revised estimates of receipts and expenditures and other changes the governor wishes to make. At that point, the two houses of the legislature begin to formulate their own budgets which generally are based on the May Revise, but usually contain deviations from it. The two versions of the budget must ultimately be combined through a compromise between the two houses.

The state constitution requires only that the governor make a budget proposal in January and that the legislature enact a budget by June 15. Almost everything else is a practice, not a constitutional mandate. Thanks largely to various ballot propositions over the years, the budget must comply with various rules voters have previously enacted. Most notable is Proposition 98 of 1988 (and a follow-up ballot modification) that specifies formulas for K-14 spending. Another potentially significant formula that voters enacted is the so-called Gann limit (State Appropriations Limit or SAL of Prop 4 of 1979) which based on population growth and inflation puts a cap on expenditures.⁹ The Gann limit can require tax refunds of revenues which exceed the cap. In recent years, the possibility of hitting the cap has developed.

The governor can veto the entire budget that the legislature has enacted, or – more commonly – exercise line-item vetoes on specific features within it. Because of the veto power, there usually are informal talks between the legislative leaders and the governor before enactment. And because Democrats now dominate both houses, the talks in recent years have involved only the majority leaders. Republicans have largely been cut out of the process.

From Previous Budget to Election Day

“I had a problem just figuring out those damn propositions. Some of them are bordering on incomprehensible.”

Jerry Brown on Election Day 2016¹⁰

Generally, once a new budget is in place in late June, the legislature turns to other matters. Some of these issues may have budgetary significance whereas others are more removed. For example, the legislature, after enacting the 2016-17 budget, considered the ongoing topic of the regulation of ride-sharing services such as Uber and Lyft relative to traditional taxis. There was a visit of the Dalai Lama to the legislature. The governor reviewed a book in the *New York Review of Books* about the danger of nuclear war, a danger which he added to global warming as an existential threat.¹¹ A court decision

⁹The GANN Limit (after Paul Gann who sponsored it on the 1979 ballot) originally had a tighter cap than today. After the state hit the limit in the late 1980s and tax refunds occurred, voters changed the limit by exempting certain expenditures and making other alterations. If the limit were hit, the excess revenue would be split between rebates to taxpayers and K-14. The state actually hit the limit during the dot-com boom in fiscal year 1999-2000, but because the excess over the limit lasted only one year, no rebates resulted.

¹⁰Quoted in Christopher Cadelago, “With so many ballot measures, Jerry Brown ponders further reforms,” Capitol Alert of *Sacramento Bee*, November 8, 2016. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article113311988.html>.

¹¹Jerry Brown, “A Stark Nuclear Warning,” *New York Review of Books*, July 14, 2016. Available at <http://www.nybooks.com/articles/2016/07/14/a-stark-nuclear-warning/>.

okayed the acquisition of some Delta islands by the Metropolitan Water District of Southern California which seemed to have something to do with the governor's water tunnel project. (The connection was left hazy.) And the legislature passed a bill that supported use of funds from a bond approved earlier by voters for the high-speed rail project.

The national presidential campaign continued in the post budget period. But California – which went heavily for Hillary Clinton in the November election – seemed to expect a nationwide Clinton victory. At the Democratic convention in July, Governor Brown denounced candidate Donald Trump's "lies" about climate change.¹² Meanwhile, the outgoing Obama administration provided a ruling that supported a California legislative effort to create a state "Secure Choice" pension system (really a tax-favored savings plan) for private-sector workers with no employer-provided retirement program.¹³ Employers without internal retirement systems would be required to offer the program.¹⁴ Of course, an expected Clinton victory would keep the ruling in place. To the extent there was a focus on Election Day in Sacramento, it was mainly on state and local races and especially the 17 ballot propositions (shown on Chart 3) that ultimately appeared on the November 2016 ballot.

Some of these propositions had fiscal significance. Prop 51, authorizing the floating of state bonds for K-14 construction, had been put on the ballot by the education establishment. But Brown opposed it and wanted such construction to be the financial responsibility of local school districts. Hospitals had put Prop 52 on the ballot dealing with certain fees as an element of the state's component of "Obamacare." The fees in a complicated way were used to finance Medi-Cal payments to hospitals, and the hospitals wanted the arrangement locked in and protected from diversion from that use.

Voters in 2012 had enacted temporary income and sales taxes at the governor's urging. Prop 55 further extended just the income tax component. Notably, the governor did not officially endorse Prop 55 although he had assumed the added revenue would continue in his budget.

On the other hand, the governor vociferously opposed Prop 53 which would have required voter approval for certain lease revenue bonds, bonds that might be necessary for his water tunnels and his

¹²David Siders and Christopher Cadelago, "Jerry Brown: 'I say Trump lies ... I say Trump is a fraud,'" *Capitol Alert of Sacramento Bee*, July 27, 2016. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article92255867.html>.

¹³Several states were in various stages of considering creating such plans. The financial services industry opposed such state-created plans which competed with IRA plans that are privately offered in the marketplace.

¹⁴The plan would be employee funded. The default for new hires would be participation in the program, although workers could opt out. Since the plan was to be employee funded, other than minimal administrative costs, there would be no cost to employers. In principle, the state was not to be at risk.

high-speed rail project. (The object of the wealthy individual who supported this proposition was particularly to thwart the water tunnels.) Governor Brown reported that his dog Sutter was recommending that voters “pee on 53.”¹⁵ He took no position on Prop 54 which provided for various reforms of the legislative process, including a provision that bills be available for 72 hours before votes were taken on them. Effectively, that rule meant that future budgets would have to be in final form three days before the June 15 deadline for legislative enactment.

Proposition 56, a hike in the tobacco tax, was primarily earmarked for various purposes and so would have little direct effect, if passed by voters, on the General Fund. But some of the revenue derived from the tax would go to Medi-Cal (the California version of Medicaid), thus helping the state support that program. Prop 57, reducing certain criminal sentences, was part of a general, ongoing effort by the governor – prodded by court decisions – to reduce the (over-crowded) population of state prisons. If successful, there would be some reduction in state incarceration costs to the budget. Marijuana legalization – Prop 66 – included tax revenue for the state and, potentially, for local governments.

The fact that there were so many propositions on the November 2016 ballot was not entirely accidental. In the past, as propositions qualified, they were put on the next statewide ballot. So some of them, based on past procedures, might have gone on the June 2016 presidential primary ballot. However, legislative Democrats, fearing that the primary might turn out more Republicans than Democrats, changed the rule to require that propositions would usually go only on general election ballots. (The legislature retained the authority to put propositions that *it* created on whatever ballot it wanted.)

Prior to the election, Governor Brown appeared sanguine about the crowded ballot. When asked whether voters would be confused about so many propositions, he replied, “no more than usual.”¹⁶ But as the quote at the heading of this section indicates, by Election Day, he seemed to retreat from that notion. There is folk wisdom in California politics that voters, if faced with a confusing ballot, tend to vote “no.” But in fact, out of 17 propositions in November 2016, only five failed.¹⁷

¹⁵ Christopher Cadelago, “‘Pee on 53’ – Brown invokes Sutter against measure on Delta tunnels,” *Capitol Alert of Sacramento Bee*, October 31, 2016. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article111613807.html>.

¹⁶ David Siders and Jim Miller, “California voters face full plate of initiatives,” *Sierra Star*, September 21, 2016. Available at <http://www.sierrastar.com/news/local/article103146387.html>.

¹⁷ A reform in 2014 created a system whereby, once an initiative had reached 25% of needed signatures, there would be an opportunity for legislative hearings and potential alternative legislation. If the legislation was satisfactory to the initiative proponents, they could withdraw the initiative. The reform had only limited effect in 2016. Arguably, one potential initiative, an increase in the state minimum wage, was withdrawn after the

Election Day to January Budget Day

"The White House is the biggest Bully Pulpit, but it's not the only one. Jerry Brown's got a pretty big one of his own."

Environmental activist on governor's
position after Trump election¹⁸

The November 2016 election – after all the votes were finally tabulated – gave the Democrats supermajority status (two thirds) in both houses of the legislature. Governor Brown had only one disappointment among the ballot propositions, the passage of the K-14 bonds. Of course, the big shocker for the state was at the national level; despite the predictions of pundits and polls, Donald Trump won the presidency through the Electoral College, although he lost the popular vote. When the California Electoral College voted (for Clinton) in December 2016, it demanded an investigation of Russian interference with the national election.¹⁹ Of the 2.9 million vote margin by which Hillary Clinton exceeded Donald Trump in the popular vote, 4.3 million came from California. (You read that correctly.) In effect, California was the mirror image of the rest of the U.S.

The national election results put many California programs into question. What would happen to the Affordable Care Act (Obamacare) which the state had enthusiastically implemented? What about funding for the governor's high-speed rail? What about the various California environmental rules, including those related to climate change? Brown warned Trump to "keep your hands off" the UC national labs as they relate to the climate issue. But, of course, with federal funding supporting those programs, it was not clear what that warning might mean in practice. UC's management of the Los Alamos lab – a legacy of the Manhattan Project which developed the atomic bomb during World War II – will be up for bid during the Trump administration's term.

legislature enacted a substitute. Apart from the reform process, the Service Employees International Union (SEIU) – an influential group in state politics – had planned an initiative to cap hospital executive salaries. But it had earlier made an agreement with hospitals about various matters which included an arbitration clause regarding disagreements as to what the accord entailed. When hospitals challenged the SEIU's initiative, an arbitrator ruled it violated the accord and the initiative effort ended.

¹⁸Jamie Henn, spokesperson for 360.org, quoted in Carolyn Lochhead, "Jerry Brown finds himself at forefront of climate-change battle," *San Francisco Chronicle*, November 26, 2016. Available at <http://www.sfchronicle.com/science/article/Jerry-Brown-finds-himself-at-forefront-of-10637772.php>.

¹⁹See <https://www.youtube.com/watch?v=MM65hfa-fXk> starting at about minute 9.

What would happen to California state and local policies that limited cooperation with federal immigration control? What about the state's plan for a Secure Choice retirement savings program which had gotten a favorable ruling from the Obama administration? Also uncertain was the effect on the economy of the Trump election. Would there be changes in taxes, particularly big tax cuts, which might act as an economic stimulus (and possibly an inflation stimulus)? Would international trade policy be affected, with impacts on California's major ports? To the extent that California might collide with the Trump administration on various issues, the legislature hired former U.S. Attorney General Eric Holder on retainer to do whatever legal combat might be deemed necessary.

Despite the political and economic uncertainties, which could not be resolved until at least inauguration day (and perhaps much later), the governor was required to come up with his January budget proposal based on whatever assumptions he deemed appropriate. Preparing such a budget was certainly underway well before January 2017. Meanwhile, President-elect Trump got into a Twitter duel with Brown's predecessor as governor, Arnold Schwarzenegger over TV ratings for the show "The Apprentice" which Schwarzenegger had inherited from Trump.²⁰ This off-the-wall behavior from the president-elect suggested that there would be a chaotic start of the new administration, and uncertainties would continue well beyond inauguration. With hindsight, we know that there was indeed a chaotic beginning that has continued through this writing.

The Legislative Analyst's Office's November 2016 budget outlook suggested that if no changes were made, and if the existing budget were continued (a "workload" budget), the result would be a budget surplus of about \$4 billion in 2017-18. (Table 3) As it turned out, the LAO's projection resulted from more optimistic assumptions about revenues in 2017-18 than the governor and legislature were willing to make. It also projected more spending, i.e., leaving the budget alone would produce more spending than what the governor and the legislature ultimately were prepared to approve. As is often the case, there were leaks before the official budget unveiling. The leaks suggested that the governor would be proposing what he considered to be a lean budget based on conservative revenue estimates.

²⁰Schwarzenegger later quit the TV program.

The January 2017 Budget

"We have a number of significant fiscal pressures that are looming."

H.D. Palmer, the governor's budget spokesperson²¹



Governor Brown's deceased dog Sutter's legacy contained in the January budget message

The actual January budget proposal included a lower-than-LAO projection of revenue in the 2017-18 fiscal year, and suggested a lower level of spending than would have been the case in a workload (unchanged) budget. (Table 3) Ending reserves (on June 30, 2018, 18 months ahead) were projected to be lower than what LAO had forecast would be the result of a workload budget. Basically, the governor's budget – whether intended or not (and it almost surely was intended) – put a constraint on the legislature. If revenues were indeed about \$4 billion less than what the LAO had projected, and if starting reserves were about \$700 million lower, then there would be less room for spending.

Governor Brown, in addition, noted the uncertainties coming out of Washington as a further fiscal restraint. He didn't, however, include assumed changes in federal policy that might affect the California budget (such as an effort to repeal the Affordable Care Act). He proposed phasing out the state's Middle Class Scholarship program, which was quickly met with objections from members of the legislature.

Other complaints quickly surfaced. Counties complained about proposals to reduce certain services for seniors and low-income individuals. Republicans complained about continuation of the high-speed rail project. Inadequate fees for Medi-Cal providers (despite passage of the tobacco tax in November 2016)

²¹Quoted in John Myers, "California Voters just approved more taxes, but the new state budget could still be lean on cash," *Los Angeles Times*, January 6, 2017

were targeted by the California Medical Association. The chair of the Agricultural Labor Relations Board quit when the the budget failed to provide funding for a worker information program. The California Business Roundtable grumbled about the budget, but voiced support for the general concept of prudence in fiscal affairs touted by the governor.

As for the issue of the vulnerability of the state to what might happen in Washington, the LAO estimated that over \$370 billion flowed into the state annually from the federal government. But the bulk of that flow went to individuals (such as Social Security payments or salaries of federal employees located in California), or to private firms for goods and services (such as defense contractors). Only about a fifth went to state government, and much of that was passed through to individuals or local governments or others. The main vulnerability of the state government directly was through Medi-Cal (Medicaid).

Later in the year, President Trump ruminated about cuts to UC-Berkeley (due to a riot in connection with a controversial conservative speaker) or to localities in California (due to “sanctuary city” policies regarding immigrants). In the case of immigration, the state filed suit against the federal government over such threats in August 2017. On the other hand, the state withdrew a proposal that had been pending with the Obama administration to give undocumented immigrants access to the state health insurance exchange. And it submitted a wishlist to the Trump administration of \$100 billion in infrastructure projects. (Congress – at this writing – has yet to approve funding for the Trump infrastructure program that was promised in the presidential campaign.)

There was a budget proposal by the Trump administration in March 2017 which, if implemented, would have entailed big cuts to various California programs, not just Medi-Cal. But the budget was quickly labeled dead on arrival, and Congress began its own process. Initially, the Trump administration blocked some funding for electrification of commuter rail in the Bay Area, but later reversed its stance. So it appeared that to the extent that California would be affected by Washington budget decisions, it would be mainly by piecemeal Congressional enactments.

Similarly, after a flurry of concern about the House bill to “repeal and replace” Obamacare, and then Senate attempts to do the same, that effort failed over the summer. California simply continued as best as it could with its health insurance program. However, the turmoil in Washington seemed to stimulate a push in Sacramento somehow to create a single-payer health plan for California. Such a plan would require the permission of the Trump administration, making its prospects extremely dubious.

But proponents kept pushing the bill through the state assembly until the speaker of the assembly stepped in, pointed to the lack of a funding plan and other operational details in the bill, and killed it. His action created an outcry in the left-wing of the Democratic Party, but the fact was that the bill was a concept, not an operational plan.²² Meanwhile, Lieutenant Governor Gavin Newsom, a candidate for governor in 2018 and former mayor of San Francisco, promised a health plan for the state modeled on Healthy San Francisco, a universal plan for residents of that city which, however, is not single-payer.²³

The governor tended to take a balancing approach regarding relations with Washington, sometimes making provocative remarks, but sometimes avoiding confrontation. Thus, he said California was “not going to sit around and just play patsy” with regard to the Trump proposal for a wall on the Mexican border.²⁴ But exactly what not playing patsy meant was unclear. The governor shied away from proposals to declare the entire state a “sanctuary.” The word “conjures up medieval sanctuary places” in churches, he said.²⁵

Media reports on the governor’s January budget proposal sometimes treat it as if what the governor proposes is what the budget will be. While it is much more true in California than in Washington that proposals from the chief executive shape the budget, there is no budget until the legislature enacts one, and the governor then signs it. And that final step, except in periods of fiscal crisis, will be in June. So after the initial reactions to what the governor has proposed, legislative hearings on the budget and its components begin. The January budget is essentially an early step in a series of steps.

As part of the hearing process, the LAO begins to churn out reports on the budget, ranging from a Big Picture overview analysis, to detailed program discussions. On the big picture, LAO continued to believe there would be more revenue than the governor was forecasting. And it criticized what it interpreted as an attempt by the governor to tweak the GANN limit (see above) as state spending began to approach the ceiling. (The governor later dropped that effort).

²²If California were ever to create a single-payer health insurance plan, it would probably require a vote of the people to modify the state constitution in order to deal with the Gann Limit on spending and possibly other barriers. Taxes would have to be created which would require a two thirds vote of the legislature or putting the issue before the voters.

²³The San Francisco plan predates the Affordable Care Act. It combines an employer mandate, community health clinics, and other elements of funding to cover all residents.

²⁴Quoted in Christopher Cadelago, “Jerry Brown rips Trump wall,” Capitol Alert of *Sacramento Bee*, March 26, 2017. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article140768068.html>.

²⁵Quoted in George Skelton, “Gov. Brown is right about the 'sanctuary state' bill: Protect law-abiders and help boot the bad guys,” *Los Angeles Times*, August 10, 2017. Available at <http://www.latimes.com/politics/la-pol-sac-skeltonjerry-brown-sanctuary-state-20170810-story.html>.

As for detailed analyses, the LAO opined – for example – that in its view, both UC and CSU were admitting some students who did not meet the eligibility standards of the Master Plan.²⁶ It noted that a major state information technology program known as FI\$CAL was having budgetary and implementation problems. The FI\$CAL issue was in fact just one of a series of administrative problems that had befallen the state in recent years.

For example, there was a scandal about improper construction standards on the replacement of part of the Bay Bridge. The Oroville Dam seemed to fall victim to an abrupt shift in the state’s weather from drought to deluge, particularly in northern California.²⁷ Its spillway for excess water collapsed, requiring a large-scale evacuation of nearby population and costly repairs. (Despite concerns about the state’s relations with the Trump administration, the new president approved emergency funding for winter storm repair in California, including Oroville.)

LAO endorsed the idea, which Brown had proposed, that the cap-and-trade program should have a two-thirds vote for a lawsuit-proof extension. Note that the governor’s high-speed rail project was reliant on cap-and-trade revenue.²⁸ The cost of buying permits under cap-and-trade was sufficiently tax-like that treating the program in the same way as a tax would be treated in the legislature was advisable. (Tax increases require a two-thirds vote of the legislature.)

Apart from high-speed rail, the governor for some time had been pushing for legislative action to raise the state gas tax and other vehicle-related charges for roads and other transportation purposes. Ultimately, the bill received the required two-thirds vote with no Republican support. One Democrat who voted for the bill had been narrowly elected in a “swing” district and was then targeted by conservative groups with a recall. Legislative Democrats changed the rules regarding recalls in an effort to move the recall election to the June 2018 primary and to avoid an earlier special election. At this

²⁶Under the original Master Plan for Higher Education of 1960, UC was supposed to admit the top one eighth of high school graduates as undergraduates. CSU was supposed to admit the top third. Exactly what these fractions mean in practice is unclear.

²⁷Governor Brown officially ended his declaration of drought in April 2017.

²⁸Under cap-and-trade, an overall ceiling is imposed on greenhouse gas emissions and the ceiling falls over time. Firms with emissions must either control them directly or buy permits to emit from the decreasing overall supply. The cap eventually falls by 2030 to 40 percent of the state’s emissions in 1990. About half of permits are given out; the allocation tilts toward firms that are viewed as likely to leave the state. The rest are sold, thus generating revenue for the state, which is supposed to be used for purposes that reduce emissions. A lawsuit aimed at invalidating the existing program failed in May 2017.

writing, it appears that litigation may have blocked that delay, although the outcome isn't certain.²⁹ A Democrat who did *not* support the gas tax was stripped of his committee chairmanship. A Republican state assemblyman filed an initiative to undo the tax and indicated he would use the initiative in his long-shot campaign for governor in 2018.³⁰

As the date of the May Revise approached, the spotlight became focused on UC after the state auditor delivered a critical report which included the allegation that UC executives had attempted to interfere with her audit. The Regents voted to establish an investigation of the charges and agreed to follow all of the suggestions contained in the audit. Essentially, these suggestions involved university budget reserves and how they were accounted and disclosed.

The May Revise and Final Budget

"Life and death becomes a pillar for us to wake up and notice what is really important."

Jerry Brown at California Highway Patrol memorial
shortly before releasing May Revise budget³¹

Table 3 shows the governor's May Revise proposal for 2017-18 which appeared on May 11, 2017. Governor Brown assumed more revenue and proposed more spending than in January and a somewhat lower starting regular General Fund reserve. More would also flow into the rainy-day fund. The net result was a total budget surplus of an extra \$1 billion with the combined reserve up about \$700 million from the January projection.

As the state senate put its version of the budget forward, it basically followed the governor's May Revise except that it assumed the starting reserve in the General Fund would be \$1 billion more than the governor did. So total reserves at the end of the fiscal year would also be about \$1 billion higher. The assembly, however, projected a much more flush reserve to start than the governor. Given that

²⁹Whenever the election is held, there will be substantial sums donated to protect the incumbent by Democrats, thanks to an opinion of the Fair Political Practices Commission. The Commission reversed an earlier ruling and relaxed rules that restricted the amount of donations the target of a recall campaign could receive.

³⁰Normally, when the legislature enacts a bill and someone wants to block its implementation, a referendum petition is filed which, if it receives sufficient signatures, blocks the implementation until the item appears on the ballot. If voters reject it (vote "no"), the bill is killed. Why Assemblyman Travis Allen did not go the referendum route and used an initiative instead is unclear.

³¹Quoted in Christopher Cadelago, "'Life and death becomes a pillar for us to wake up,' Jerry Brown says at CHP memorial," Capitol Alert of *Sacramento Bee*, May 2, 2017. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article148179149.html>.

assumption, it proposed more spending, while ending up with a final combined reserve about the same as the governor's.

Unlike the interval between the January budget proposal and the May Revise, the time between the May Revise and constitutionally required action by the legislature is short. So some issues tended to be crowded out by the need to enact a budget. For example, the Obama ruling that supported the state's effort to create a Secure Choice savings plan for workers who had no employer-provided plan was revoked by the Trump administration. State leaders indicated they planned to go ahead anyway, but exactly what would be entailed without the federal ruling was unclear.

The state has an elected Board of Equalization (BOE) that administers certain tax collection and adjudication. Its origins are linked to the local property tax which before Prop 13 of 1978 involved periodic assessments by local county assessors of property values. BOE was supposed to ensure that there was equal treatment of property assessment across jurisdictions. Prop 13 changed the methodology to a formula based on the sales prices which removes substantial local discretion, so the original justification for BOE was at least reduced. Scandals at the BOE led to a desire to replace BOE with some other mechanism.

While an elected agency couldn't be abolished without amending the state constitution, its responsibilities could be reduced and placed elsewhere. But a little more than a month was not a lot of time for developing an alternative. Nevertheless, in the end, that is what was done. Similarly, the controversy at UC with regard to the state audit led to a budgetary provision withholding \$50 million until there was certification that the auditor's recommendations were implemented.

Governor Brown met with the Democratic leaders of both houses of the legislature and, in essence, negotiated a compromise deal. Table 3 suggests that the assembly's push for added spending relative to what was proposed in the May Revise was reflected in the eventual deal. The governor could have used his line-item veto on the compromise deal as it emerged from the legislature. But as he had done the year before, he made no changes in the compromise enactment. The Middle Class Scholarship program was retained. The state's Earned Income Tax Credit was expanded to include certain self-employed individuals (example, Uber drivers).

Some items that may not seem to be directly part of the budget are sometimes included in the various bills that implement the budget by including a nominal expenditure in the implementing bill. Thus, certain gun control provisions were added to the process following that route. CSU was required to

admit more students. CalPERS, the large state pension plan for state employees (other than UC) and many local employees, received a contribution via a low-interest loan from the state's short term investment pool (which earns low interest on its funds because they are short term and liquid).

Once the budget deal was reached, other issues again resurfaced. The governor worked on obtaining a two-thirds vote to extend the cap-and-trade program, telling legislators it was "the most important vote of your life."³² Brown ultimately succeeded in the effort, receiving a handful of Republican votes. The business community generally prefers cap-and-trade to command-and-control regulation of emissions. That preference, combined with some side deals made to obtain those Republicans votes, was sufficient to receive the needed supermajority.

Among those side deals was a constitutional amendment that would require a vote in 2024 to reset spending allocations for cap-and-trade revenues, a vote that would potentially put Brown's high-speed rail at risk.³³ Such a vote might give the Republicans a chance to kill the project at the ballot box. Brown gambled that his project would be so far along by 2024 that voters wouldn't want to halt it. But that gamble depends in part on who is elected governor and sufficient continued funding until then. Within Republican ranks, there were protests against the GOP votes for cap-and-trade including calls for the minority leader in the assembly to step down, which he eventually had to do.³⁴

Conclusion

"I don't have a legacy. I don't know what a legacy is."

³²Quoted in George Skelton, "As cap-and-trade evangelist, Gov. Brown shows he's the most effective politician Sacramento has seen in a long time," *Los Angeles Times*, July 17, 2017. Available at <http://www.latimes.com/politics/la-pol-sac-skelton-cap-trade-jerry-brown-20170717-story.html>.

³³Various tax breaks were included to obtain GOP votes, including ending a rural fire-fighting fee. For Democrats worried about environmental justice, there was an arrangement to help poor communities adversely affected by air pollution. See Dan Smith, "Six ways Jerry Brown got the votes for a California climate deal," *Capitol Alert of Sacramento Bee*, July 17, 2017. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article161905653.html>.

³⁴As fallout from his vote for cap-and-trade, Republican minority leader Chad Mayes was accused of having an affair. Before being ousted as minority leader, Mayes retaliated against a Republican assemblywoman who had called on him to step down by having her reassigned to the smallest office in the capitol building known as the "doghouse." After losing his post, Mayes declared, "What we've been doing for the last twenty years is not converting Californians to our ideas. We've been repelling them. And we haven't been reflecting Californians, we've become more insular and ideologically pure. And both of those are not winning strategies." Quoted in Laurel Rosenhall, "Ousted leader's advice to fellow Republicans: Stop 'repelling' Californians," *CalMatters*, August 30, 2017. Available at <https://calmatters.org/articles/ousted-leaders-advice-fellow-republicans-stop-repelling-californians/>.

Jerry Brown after the legislature passed his cap-and-trade bill³⁵

Despite conclusion of the 2017-18 budget process, there were more elements of uncertainty left open in both the short term and long term than usual. Much of the uncertainty stemmed from the turmoil in Washington. It was unclear what might happen to the Affordable Care Act (Obamacare) and Medi-Cal (Medicaid) funding in Congress and in the hands of the president. To the extent that Governor Brown's high-speed rail depended on Washington money and favorable court and other rulings, that project, too, faced uncertainties. California's efforts to create a Secure Choice retirement savings plan, which engendered opposition from the financial services industry, also might be halted – or at least made more complicated – by actions in Washington.

There is also (always) a degree of uncertainty about the trajectory of the national economy, which tends to carry the California economy along with it. The LAO thinks that the current level of reserves that has been built up under Brown could carry the state through a recession. Of course, what would happen in practice would depend on the depth of any such recession and how the legislature reacted to it. No recessionary clouds were apparent at this writing, but forecasting the economy is not as precise a science as the computer models that are often used might make it appear.

Brown's water tunnel project is nowhere near as far along as his high-speed rail. What might happen to it will surely depend on the attitude of the next governor to be elected in November 2018. Various candidates were already announced or in decision mode as the next gubernatorial election approaches. How well the state handles the repair of the Oroville Dam could have an impact on public sentiment towards another big water project.

Jerry Brown repeatedly has denied he is worrying about legacy, but such disinterest is hard to believe. If history is a guide, if he does succeed in leaving big tangible projects, he will be remembered for them, as his dad was. But will folks – 50 years from now – remember a budget reserve? Will they remember state policies limiting greenhouse gas emissions? That's harder to predict. But there is nothing like a legacy literally carved in stone (or rail or concrete) to keep a memory alive. The fate of other achievements is more iffy.

³⁵Quoted in Christopher Cadelago and Taryn Luna, "Will California Democrats pay a price for Jerry Brown's latest victories?" *Sacramento Bee*, July 20, 2017. Available at <http://www.sacbee.com/news/politics-government/capitol-alert/article162565978.html>.

Table 1: General Fund Budget, Cash Basis, FY2012-13 – FY2016-17

Cash \$billions	Brown Actual 2016-17	Brown Planned 2016-17	Brown Actual 2015-16	Brown Actual 2014-15	Brown Actual 2013-14	Brown Actual 2012-13
Receipts	122.6	125.7	120.4	116.4	104.0	103.4
Disbursements	(126.8)	(130.7)	(123.6)	(115.8)	(99.6)	(96.3)
Gross surplus/deficit	(4.2)	(5.0)	(3.2)	0.6	4.4	7.2
Transfers to reserves						
SPEU	0.6	0.6	0.8	–	0.1	*
BSA	2.8	3.3	1.9	1.6	–	–
Total reserve transfers	3.4	3.9	2.7	1.6	0.1	–
Net surplus/deficit	(0.8)	(1.1)	(0.5)	2.2	4.5	7.2
Unused borrowable resources	37.0	33.0	35.2	28.3	23.8	18.8

*Transfer to SPEU account was offset by equal borrowing from the account

Source: California State Controller, monthly cash statements, June of year shown.

Table 2: Official Budget Reserve Data (Accrual Basis), End of Year in \$ billions

	General Fund Reserve	Budget Stabilization Account	Total Reserves	Surplus*
2012-13	-\$1.6	0	-\$1.6	+\$1.5
2013-14	+\$2.5	0	+\$2.5	+\$4.1
2014-15	+\$5.6	+\$1.6	+\$7.2	+\$4.7
2015-16	+\$4.5	+\$3.7	+\$8.2	+\$1.0
2016-17	+\$1.6	+\$6.7	+\$8.3	+\$0.1
2017-18	+\$2.4	+\$8.5	+\$10.9	+\$2.6

*The surplus is the change in total reserves from year to year. Total reserves in 2011-12 were -\$3.1 billion. On an accrual basis, no deficits (negative surpluses) occurred during the time period shown. Note: Figures for 2017-18 are enacted budget projections.

Source: California Department of Finance:

http://www.dof.ca.gov/budget/summary_schedules_charts/documents/CHART-A.pdf;

http://ebudget.ca.gov/2017-18/pdf/Enacted/BudgetSummary/BS_SCH1.pdf; and

http://www.dof.ca.gov/budget/summary_schedules_charts/documents/CHART-H.pdf.

Table 3: Evolution of the 2017-18 Budget

Accrual \$ billions	June 2017 Final	Post-May 2017 Senate	Post-May 2017 Assembly	May 2017 May Revise	January 2017 January Proposal	November 2017 LAO Outlook
Starting GF reserve	1.6	1.7	3.1	0.7	1.0	1.7
Revenue & transfers	125.9	125.7	125.8	125.9	124.0	128.1
Expenditures	125.1	123.8	126.2	124.0	122.5	126.1
Surplus/deficit	0.8	1.9	-0.4	1.9	1.5	2.0
Ending GF reserve	2.4	3.6	2.7	2.6	2.5	3.7
Budget Stabilization Fund						
Starting balance	6.7	6.7	6.7	6.7	6.7	6.7
Ending balance	8.5	8.5	8.5	8.5	7.9	8.7
Surplus/deficit	1.8	1.8	1.8	1.8	1.2	2.0
Total surplus/deficit	2.6	3.7	1.4	3.7	2.7	4.0
Total ending reserves	10.9	12.1	11.1	11.1	10.4	11.5

Source: <http://www.ebudget.ca.gov/budget/2017-18/#/BudgetSummary>;

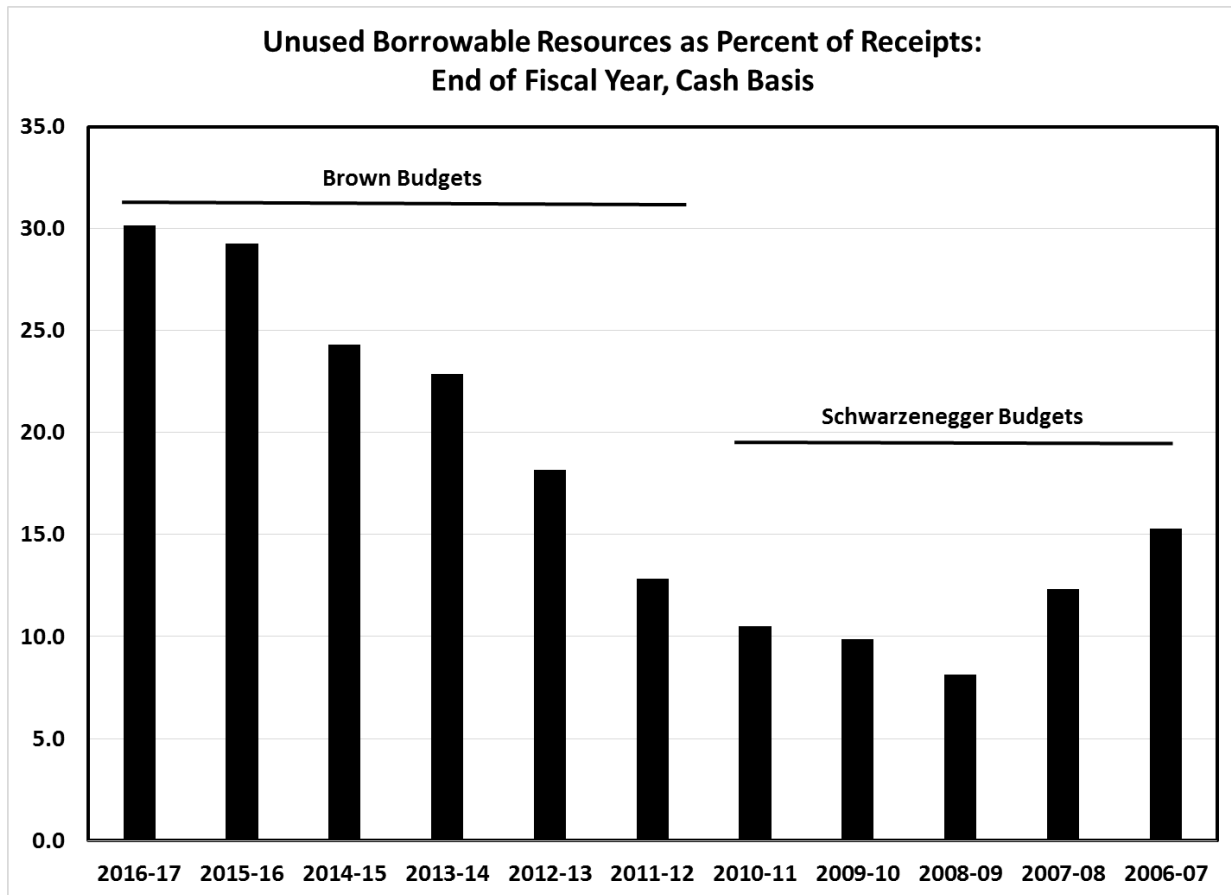
<http://www.ebudget.ca.gov/budget/2017-18MR/#/BudgetSummary>;

<http://www.ebudget.ca.gov/budget/2017-18EN/#/BudgetSummary>;

<http://www.lao.ca.gov/reports/2016/3507/Fiscal-outlook-111616.pdf>;

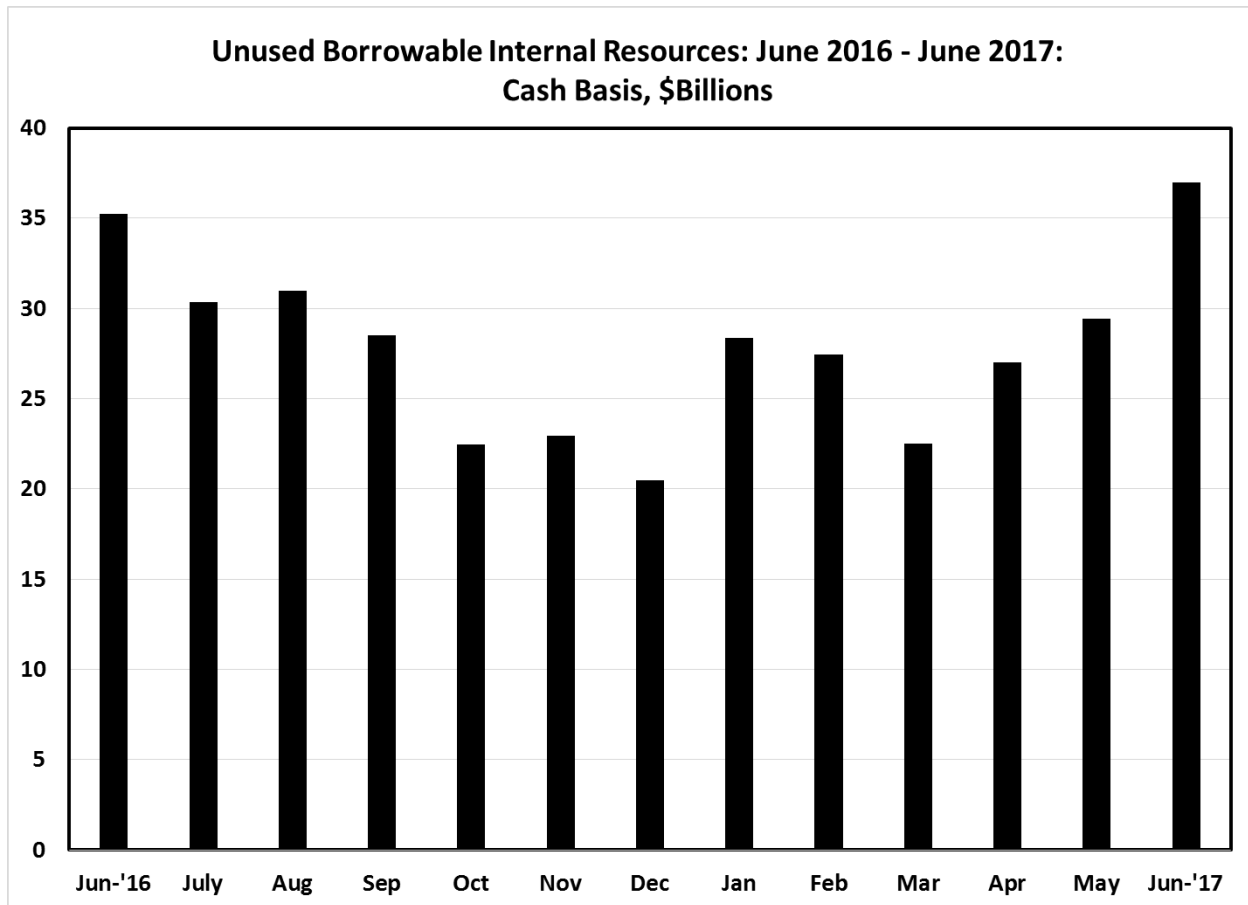
http://www.lao.ca.gov/handouts/Conf_Comm/2017/Conference-Committee-Overview-053017.pdf.

Chart 1:



Source: California State Controller, monthly cash statements, June editions. Available at http://www.sco.ca.gov/ard_state_cash.html.

Chart 2:



Source: California State Controller, monthly cash statements for months shown. Available at http://www.sco.ca.gov/ard_state_cash.html.

Chart 3: Ballot Propositions Placed Before Voters in November 2016

Prop 51: Authorization for K-14 Bonds*

Prop 52: Medi-Cal Hospital Fees

Prop 53: Require Voter Approval for Revenue Bonds (Failed)*

Prop 54: Legislative Procedures Including 72-Hour Rule

Prop 55: Extension of Prop 30 Temporary Income Tax**

Prop 56: Tobacco Tax

Prop 57: Reduced Criminal Sentences***

Prop 58: Revive Bilingual K-12 Education

Prop 59: Advisory Anti-US Supreme Court Citizens United Decision

Prop 60: Require Condoms in Porn Films (Failed)

Prop 61: Limit Prices State Pays for Drugs (Failed)

Prop 62: Repeal Death Penalty (Failed)

Prop 63: Gun Controls

Prop 64: Recreational Marijuana Legalization

Prop 65: Specify Use of Carryout Grocery Bag Charges (Failed)

Prop 66: Speed Up Death Penalty Process

Prop 67: Referendum: Endorse Law Banning Plastic Bags

*Opposed by governor.

**Governor officially neutral.

***Supported by governor.

Source: Figure 24 of Legislative Analyst's Office, *The 2017-18 Budget: California's Fiscal Outlook*. Available at <http://www.lao.ca.gov/Publications/Report/3507>.

Chapter 4

Reimagining the Los Angeles Rent Stabilization Ordinance: Preventing the Displacement of Vulnerable Renters in South Los Angeles

Susan Oh, Karen Law, Cameron Burch, and Ahmed Ali Bob

The authors are all 2017 Master of Public Policy
graduates of the UCLA Luskin School of Public Affairs

As the cost of rent increases throughout the City of Los Angeles, a growing number of tenants have found themselves at risk of displacement—particularly low-income and minority renters. One policy that has the potential to address their displacement is the Los Angeles Rent Stabilization Ordinance (RSO), a city ordinance that was created almost 40 years ago. Its implementation and enforcement must be improved to provide support to vulnerable tenants, especially in South Los Angeles where the community has started experiencing challenges around displacement and gentrification.

In this report, we first present a background of the RSO, relevant state policies that affect it, and a discussion about gentrification and displacement in South Los Angeles. We then discuss the implications of the current implementation of the RSO and its limitations. Lastly, we offer policy recommendations that can be adopted to strengthen the implementation and enforcement of the RSO to promote housing stability for vulnerable renters in South Los Angeles.

Legal Framework

The Rent Stabilization Ordinance was enacted by Los Angeles City Council in 1979 with the intention of “[safeguarding] tenants from excessive rent increases, while at the same time providing landlords with just and reasonable returns from their rental units.” At the time, Proposition 13 cutting property taxes dramatically had passed with the promise that renters would benefit from reduced landlord taxes. When rents continued to rise, various local jurisdictions enacted controls. The RSO is administered by the Los Angeles Housing and Community Investment Department (HCIDLA), which manages: 1) allowable rent increases, 2) registration of rental units, 3) just reasons for eviction, and 4) the types of evictions that require payment of tenant relocation assistance.

The RSO only applies to properties first built on or before October 1, 1978, including apartment buildings, condominiums, townhomes, and duplexes, among others. All rental units are subject to the Systematic Code Enforcement Program (SCEP), which requires the inspection of rental units every four years to ensure compliance with building and housing codes. In addition to regulating rent increases, the RSO plays an important role in housing since it provides one of the only touch points the city has to monitor the quality of rental units.

RSO and Eviction (Ellis Act)

In 1985, the California State legislature passed the Ellis Act which gave RSO landlords the right to evict tenants if they intend to remove their building from the rental market. Non-RSO landlords can potentially earn more than RSO landlords and the Act allows landlords to “Ellis” their properties, redevelop them, or sell them as condominiums.

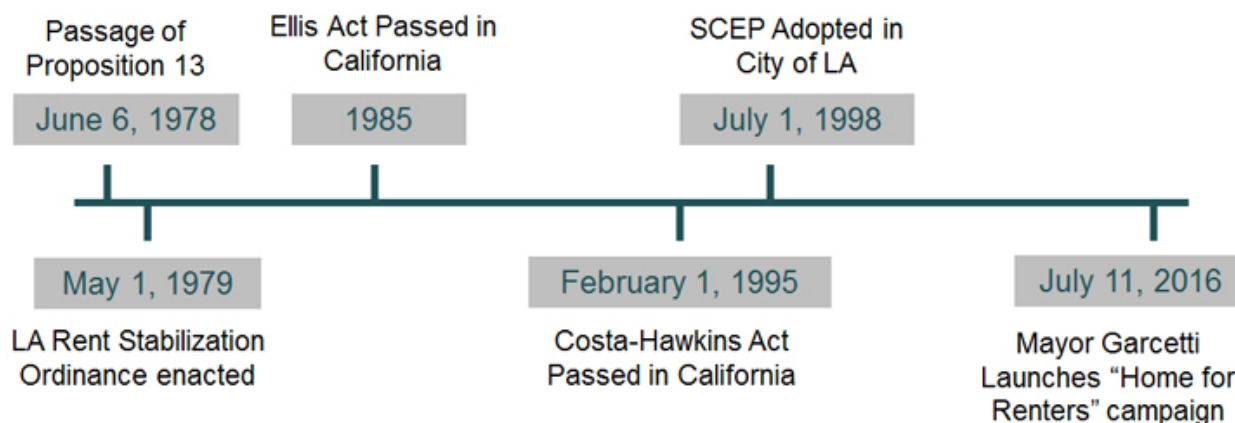
Cities such as San Francisco, Los Angeles, and Santa Monica have seen a large decrease in the number of RSO units since the passing of the Ellis Act. According to the Los Angeles Housing and Community Investment Department, “since 2001, property owners have taken nearly 19,000 rent-controlled units across the city off the market using the Ellis Act.” In 2016 alone, the City of

Los Angeles lost 1,400 RSO units to Ellis Act filings. This decrease has resulted in the displacement of scores of renters who enjoyed affordable rents, but are forced to find new housing at market value.

RSO and the Costa-Hawkins Act

In 1995, California passed the Costa-Hawkins Act, a state law that prohibited local governments from amending their rent stabilization ordinances to include units that were not covered prior to 1995. For Los Angeles, this meant that an expansion of the RSO to include units built after October 1978 would not be possible without a state law amendment. Costa-Hawkins also requires that jurisdictions allow landlords to reset rents to market rates once units have been vacated. This practice, also known as “vacancy decontrol,” was prohibited in cities such as Santa Monica and West Hollywood which had strict rent control laws before the enactment of this act. But Costa-Hawkins overrode those local restrictions.

Figure 1: Timeline of Rent Regulations in Los Angeles



Displacement in a Changing Housing Market

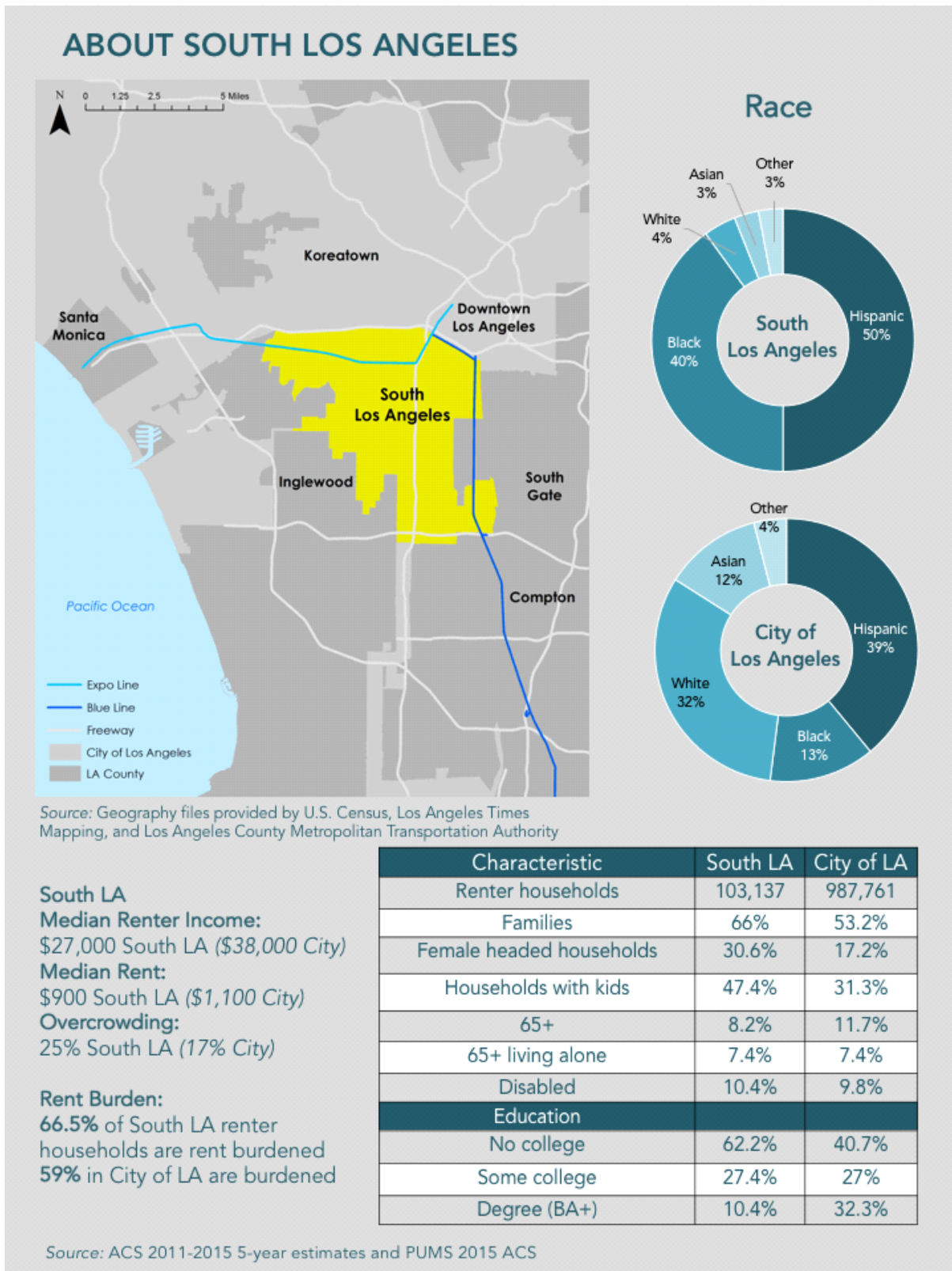
Across Los Angeles, more affordable residential areas are experiencing “gentrification” which is changing both the physical and demographic landscape of these communities. Gentrification occurs when higher-income and higher-educated residents move into working-class neighborhoods. Displacement occurs when housing or neighborhood conditions force residents to move. To understand the relationship between gentrification and displacement better, researchers conducted a meta-analysis of various previous studies. They found that most studies agree that at a minimum, gentrification makes it difficult for disadvantaged residents to move into a neighborhood.

As a result of gentrification, long-time residents in some neighborhoods can no longer afford the rising costs of rent, goods, and services in their neighborhoods. This process has impacted low-income and minority communities more than any other group. It causes them to move farther away from areas with employment opportunities and resources, which adversely affects their opportunities for social mobility. The changing demographic of neighborhoods has also negatively affected community networks and identities, whose historic connections to their neighborhoods are threatened by new residents who do not identify with or actively participate in their new communities. In the face of gentrification, development, and displacement, the RSO has emerged as an anti-displacement policy and potential tool the City of Los Angeles could employ to combat displacement and maintain affordable rents for its residents.

Displacement in South Los Angeles

The focus of our discussion is the community of South Los Angeles, a predominantly low-income and minority neighborhood described on Figure 2. South Los Angeles is vulnerable to gentrification because its more affordable housing stock attracts renters who are priced out of neighboring communities; this process is referred to as a "secondary wave of displacement." In 2015, the Urban Displacement Project found that most census tracts in South Los Angeles were vulnerable to gentrification.

Figure 2: Demographics of South Los Angeles



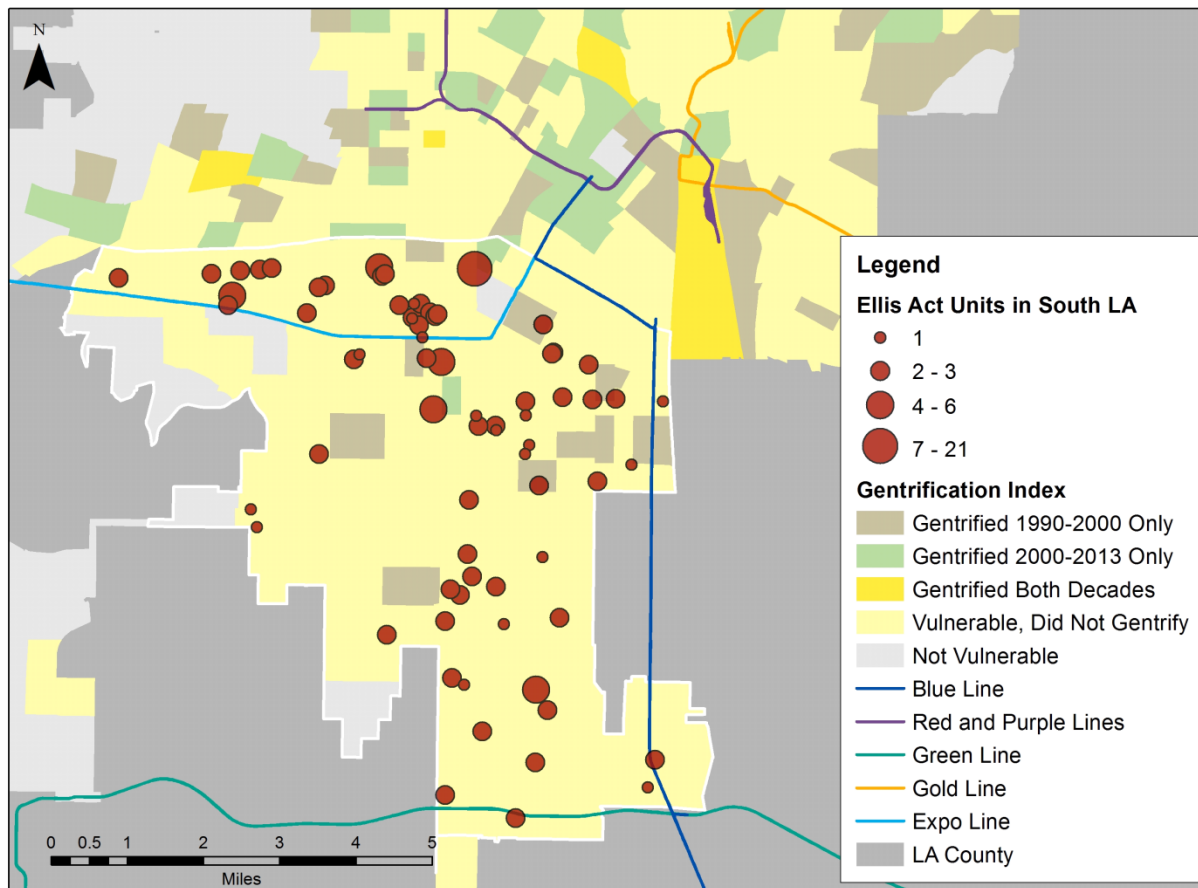
The development of the Exposition Light Rail through South Los Angeles and the transit-oriented development (TOD) that ensued has contributed to the increase of in-movers to the area. TOD refers to commercial and residential districts built around mass transit stations or corridors, designed to encourage ridership on buses and trains. Today, the bulk of subsidized development is realized through TOD's, funded by the U.S. Department of Housing and Urban Development (HUD) block grants and state cap-and-trade revenues. See Figure 3 for a map of transit lines and communities in South Los Angeles vulnerable to gentrification.

In 2015, the Mayor's Office released the Sustainable Plan for Los Angeles highlighting plans to use transit-oriented development to promote equitable development and affordable housing in a climate of government funding cuts. However, a study in 2014 stated that local officials restricted residential uses along transit stations in South Los Angeles and instead emphasized commercial and industrial uses to generate greater property tax revenue. Studies have found that "when TOD is associated with commercial growth, that growth can fail to benefit local residents and small business-owners."

This effect may be occurring in South Los Angeles; according to a report from March 2016, rents along the Expo Line had increased by 15% since 2015. That impact is notable because prior to that period, the rental housing market in South Los Angeles had remained uniquely unaffected by rental increases occurring elsewhere in Los Angeles. The fact that South Los Angeles is starting to show signs of gentrification as a result of transit-oriented development is concerning.

Gentrification will increase housing demand and may incentivize landlords to raise rents or remove their units through the Ellis Act. The South Los Angeles housing landscape is especially vulnerable to change because the RSO covers 71.5% of its rental stock. In the current housing climate, the RSO becomes a double-edged sword—it protects tenants from rent increases, but also makes them more vulnerable to displacement. The RSO is then a relevant intervention point.

Figure 3: Gentrification Vulnerability Map



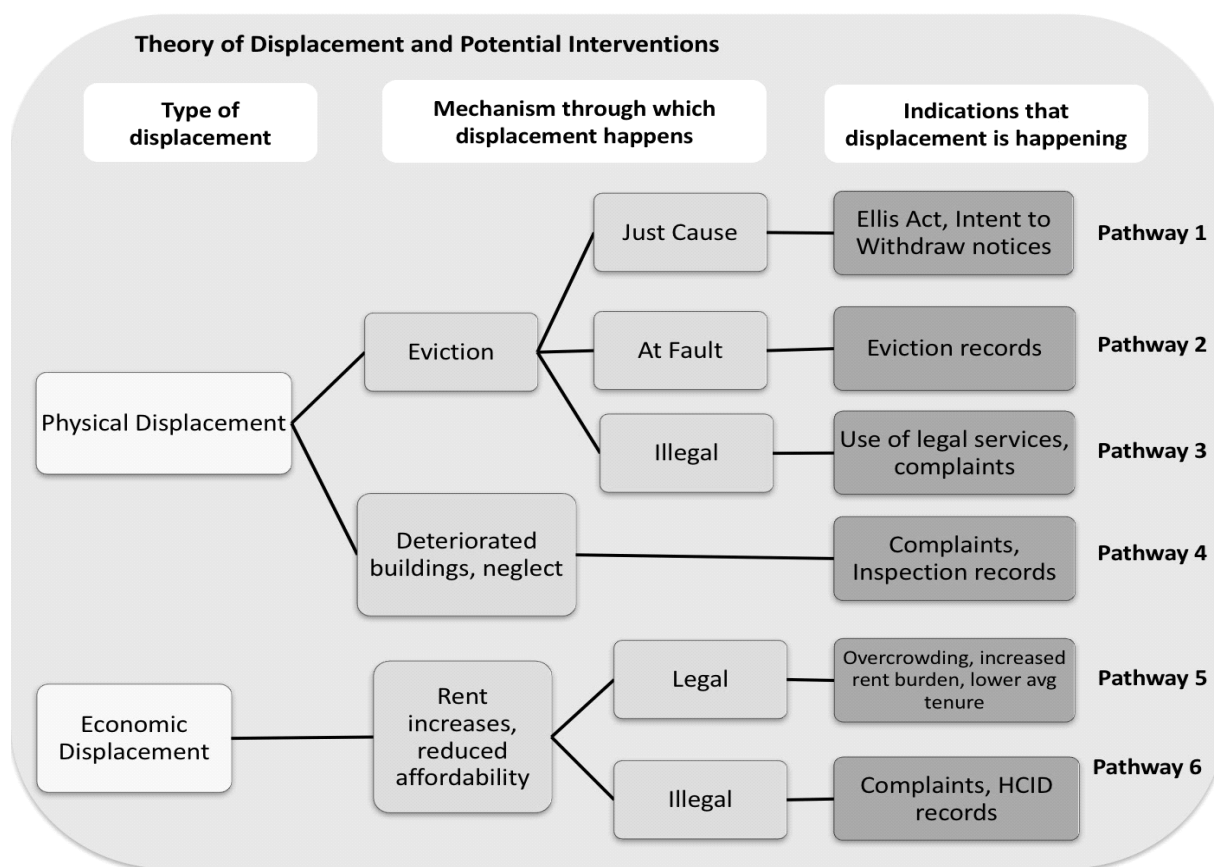
Sources: Urban Displacement Project, 2015; HCIDLA, 2016; LA Metro, 2016

South Los Angeles is seeing new commercial development projects that will accelerate gentrification. In late 2016, City Council unanimously approved the Reef Project, a \$1.2-billion mega-construction project that promises 500 apartments, condos, hotel rooms, a parking lot, and retail spaces. Critics and community members are concerned that the new units, which are unaffordable to local residents, will drive up rents in the area and push them out of their community. According to a health and equity impact report conducted in October 2015, an estimated “84,000 residents living within 2 miles of the project could be at risk of financial strain or displacement as a result of the Reef Development Project.”

In the face of TOD, commercial development, and subsequent neighborhood changes, we expect increased movement of South Los Angeles renters, both voluntary and involuntary. To examine the implications of displacement of RSO renters, we developed the following theory of displacement to guide our research. Figure 4 below summarizes the theory and illustrates six mechanisms by which displacement occurs. Physical displacement happens through eviction (just-cause [pathway 1], at-fault [pathway 2], or illegal [pathway 3]) or deteriorating conditions [pathway 4]. Economic displacement happens legally, when tenants cannot keep up with

allowable rent increases [pathway 5], and illegally, when landlords increase rents by more than what is allowed [pathway 6].

Figure 4: Theory of Displacement



Implications of the RSO in Contemporary Los Angeles

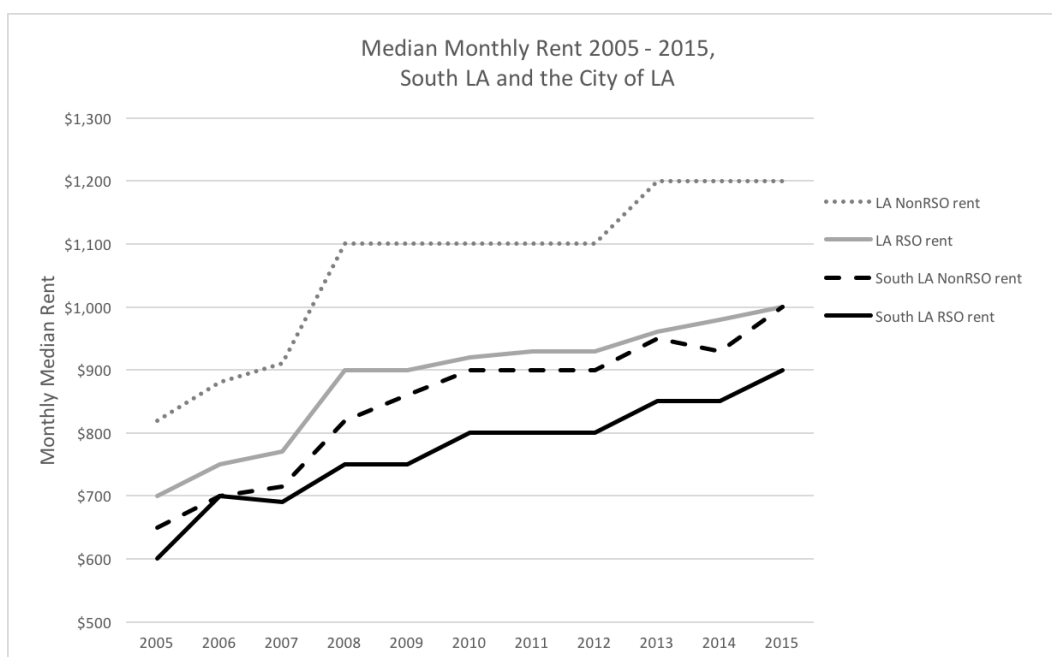
In 2009, an economic study of the RSO commissioned by the City of Los Angeles was conducted by the Economic Roundtable. Based on a survey of 2,948 RSO renters, the study found that the rent differential between rent-stabilized and non-stabilized units in Los Angeles ranged from \$0 to \$500. But the smallest differential was found in the South Los Angeles Area Planning Commission where the average and median rents of both types of units were almost identical.

We analyzed data from the Census Bureau's American Community Survey (ACS) Public Use Micro Data Sample (PUMS) between 2005 and 2015 to observe the difference in rent increases

between stabilized and non-stabilized units. Median rent in South Los Angeles and the city was found to be consistently lower in units covered by the RSO, as shown on Figure 5. On average, RSO rents were \$90 lower than non-RSO rents.

Although rents in South Los Angeles have remained lower than in the rest of Los Angeles, this situation may change in the next few years due to increased development in the area. We expect that South Los Angeles will experience an increased gap between RSO and non-RSO rents. The time trends in Figure 5 are consistent with claims that RSO tenants receive more frequent rent increases than tenants of non-stabilized units. The Economic Roundtable study found that 63% of RSO renters reported that their rent increased every year, compared to 54% of non-RSO renters who reported yearly increases.

Figure 5: South Los Angeles and City of Los Angeles Median Rent, 2005 – 2015



Source: U.S. Census Bureau. "ACS 1-year estimates," U.S. Census Bureau, 2005 – 2015.

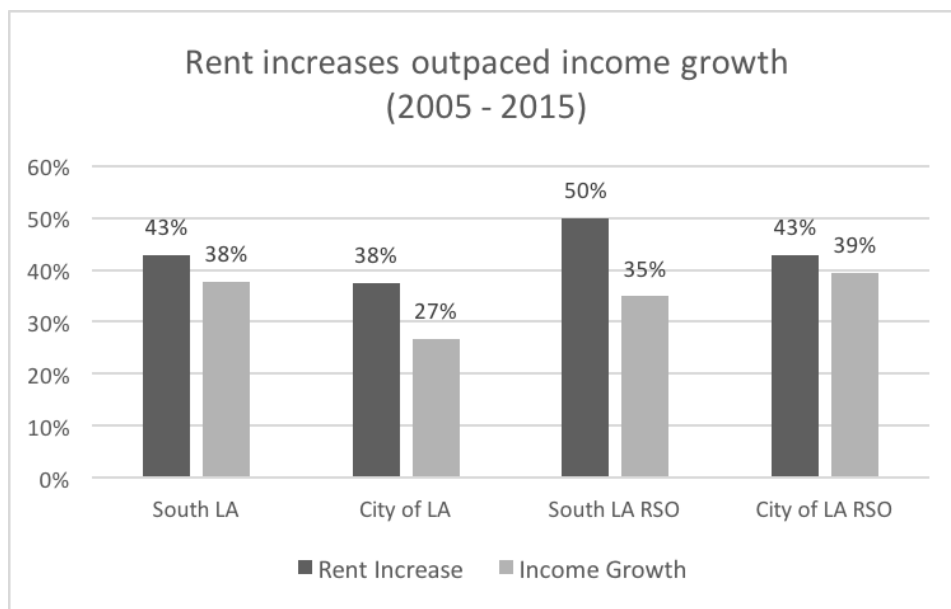
More frequent rent increases could be an unintended consequence of the RSO. The RSO allows landlords to increase annual rents based on a percentage set by HCIDLA (between 3-8%), which is determined by the Consumer Price Index (CPI) of the area. The 3% floor of the annual RSO rent increase has created controversy among renters who claim that it is unfair, since increases in CPI have remained at less than 3% per annum since 2009. Critics argue that doing away with the 3% floor and pegging annual RSO rent increases to CPI instead would be more reasonable, claiming it is a closer measure of the increase in operating costs of a rental unit.

In addition to frequent rent increases, there have been reports of illegal rent increases for tenants in RSO units. The city receives “over 7,000 tenant complaints per year concerning possible violations of the RSO”—one third of which are for illegal rent increases. Twenty-seven percent of tenants in RSO units reported rents that were above the projected allowable increase permitted by the RSO. These tenants appeared to be low-income renters or those with the lowest starting rents. Larry Gross, the Executive Director of the Coalition for Economic Survival (CES), a tenants’ rights organization in Los Angeles, reported that landlords have also been found to unlawfully push the costs of amenities, such as parking, on renters to increase rents indirectly for RSO tenants.

Rent Burden

Although RSO rents in South Los Angeles have increased by a larger percentage than non RSO rents, income growth among RSO renters has been slower (see Figure 6). Rising RSO rents have increased rent burden on low-income families who often have to find other means to keep up with increasing living costs. The Economic Roundtable report found that in 2009, 58% of renters in Los Angeles were rent burdened, which they defined as paying over 30% of their income on rent. According to 2015 ACS estimates, 66.5% of South Los Angeles renters are rent burdened, by the same definition.

Figure 6: South Los Angeles and City of Los Angeles Median Rent Increase & Income Growth



Source: U.S. Census Bureau. "ACS 1-year estimates," U.S. Census Bureau, 2005 – 2015.

Based on the allowable 3% RSO rent increase, the combined maximum allowable RSO rent increase from 2009 to 2015 was 19%. According to ACS estimates, actual median rents in South Los Angeles increased by 13.6% while median incomes only increased by 1.9% since 2009.

There is a necessity to update the RSO to reflect the current reality of the Los Angeles rental market, price of goods, and median incomes, especially in South Los Angeles.

Overcrowding

The Economic Roundtable report found that tenants either look for more employment to supplement their incomes or overcrowd their units (see pathway 5 in Figure 4), defined as a ratio of 1.01 to 1.50 occupants per room, in response to increasing rents. Overcrowding has been widespread among low-income renters, with 28% of renters at or below 200% of the poverty level living in overcrowded conditions. Overcrowding and severe overcrowding (a ratio of 1.51+ occupants per room) has been most prevalent in South Los Angeles and East Los Angeles. According to 2015 ACS estimates, the average household size in Los Angeles was 3.49 people. Approximately 25% of South Los Angeles renter households are overcrowded and 12.4% are severely overcrowded.

Tenure and Mobility

There is consensus among economists that the lock-in effect of RSO policies creates inefficiencies in the housing market. The lock-in effect describes a situation in which tenants stay in RSO units longer because of the high cost of moving, both real and imagined. Were they to move, they might well pay a higher market rate for a comparable unit in the new location. Thus, even if job opportunities or personal reasons would otherwise induce them to move, tenants tend to stay in place. But it is that same lock-in effect that provides both tenants with housing stability and communities with stability of residents, especially in low-income communities.

At the same time, long-term tenants are more likely to be engaged in their community, and neighborhood-based social connections associated with long-term residents are especially important for low-income and minority residents. When residents are displaced from their homes, they are often also displaced from their communities, which can result in the loss of social networks and support. Thus, rent-induced mobility can have social costs.

While it is probably too early to see significant rent increases as a result of new development in our quantitative data, our qualitative findings suggest residents already perceive that development-induced financial hardships are increasing in South Los Angeles. According to Fernando Gaytan, managing attorney for the Legal Foundation of Los Angeles (LAFLA), long-term tenants looking to hold on to their units are especially prone to seek legal assistance.

As rents increase in South Los Angeles, low vacancy rates will also make it increasingly difficult for people to find affordable housing. Vacancy rates in South Los Angeles have already dropped from 4.4% in 2010 to 3.6% in 2015. This decrease in available units will put pressure on residents who are considering moving to stay in their units, which will contribute to lower mobility rates. Mobility rates already tend to be lower among low-income and minority renters, which is the predominant demographic of South Los Angeles. Lower vacancy and mobility rates,

combined with tenure and RSO rent discounts, make it more difficult for long-term renters to move and worsen effects of displacement.

Gentrification has also been found to affect tenure and mobility. Higher rent inflation associated with gentrification reduces the odds that a poor household will voluntarily move. Low-income tenants may also benefit from the effects of gentrification, such as decreases in violence and improved neighborhood amenities. The combination of community benefits, tenure discounts, and RSO rent discounts in the face of increasing market rents may make poor and uneducated households less financially able and willing to move. But when voluntary mobility is low, vacancy rates are low, and market rents are increasing, landlords have a larger incentive remove RSO units from the market or push longer-term tenants out. They are then able to charge higher rents to new tenants, as some of our qualitative interviews have revealed.

Habitability of RSO Units

According to the literature and our stakeholder interviews, some landlords circumvent tenant protections and force tenants to move out “voluntarily” in order to raise rents to market value. Staff from three prominent tenant rights and advocacy groups—Strategic Actions for a Just Economy (SAJE), LAFLA, and Inquilinos Unidos, shared how RSO landlords decrease the habitability of units as a way to pressure tenants to move out. Landlords practice “constructive eviction,” where they use a variety of tactics that target habitability, such as refusing to fix repairs and turning off utilities, to remove tenants.

Some studies on rent control have argued that landlords are incentivized to allow units to deteriorate and engage in harassment and intimidation in order to raise rents to market rate. However, “constructive eviction” is difficult to determine because it is inherently difficult to prove a landlord's intent. This fact makes it difficult to verify claims of landlord harassment and deliberate un-inhabitability in quantitative data. In addition, records of eviction cases that go to court are sealed and unavailable to the public if a tenant agrees to move out.

Living Conditions in RSO Units

RSO tenants may endure poor living conditions and unresponsive landlords. In the Economic Roundtable report, focus groups of RSO renters shared that they experienced unsafe and unhealthy living conditions, including vermin infestations, because they could not afford to move. This report also found that tenants living in substandard conditions were likely to be extremely poor, disabled, or linguistically isolated. Concerns about repairs were also brought up in both our qualitative interviews and secondary research. A tenant rights' advocate shared that repairs of RSO units are often poor quality and superficial. This is also supported by the Economic Roundtable report that found that RSO building maintenance is inconsistent, incomplete, and second-rate.

Current Complaint System

Currently, Los Angeles renters may file code complaints to HCIDLA to address habitability concerns. Complaints can be made for all types of code violations, ranging from peeling paint to missing smoke detectors. In addition to code complaints, HCIDLA also receives RSO complaints, made by RSO tenants to report illegal increases in rent and reductions in services. A tenant rights' advocate shared that tenants often file complaints and “nothing really comes out of it.” However, Fernando Gaytan from LAFLA acknowledged the benefits of reporting complaints to HCIDLA to contribute to public records.

Landlords' Challenges

When tenure and RSO rent discounts are large, landlords struggle to make profits. In the Economic Roundtable report, a survey of 2,036 RSO property owners representing over 75% of the RSO rental stock shared that rent increases do not keep up with operating costs, making it difficult for them to get a reasonable return on their property investment. Only 28% of RSO properties were profitable and about a third experienced a loss. Additionally, owners of small buildings were least likely to report a profit.

If landlords are unable to make a return, there is an incentive to remove long-term tenants increase profits. This is especially relevant for small buildings, where one or two long-term tenants will have a sizeable impact on total collected rent. However, long-term tenants, who cause owners the most economic disadvantage, are the least likely to move. In South Los Angeles, 16.8% of renters have lived in their apartment for more than 16 years. Without tenant turnover or other economic relief, owners may decide to go out of business, either by selling the building to another business owner, or removing the property from the rental market altogether.

Owners would need to anticipate a high return for market value housing for there to be an incentive to “Ellis” a property. This prospect has not yet been the case in South Los Angeles. Only 132 units, just .01% of the total RSO stock, have been “Ellised” since 2013. (See Figure 3 for a map of “Ellised” units in South Los Angeles.) But recent economic investment in the area will create more favorable conditions for owners to sell units for market value.

RSO landlords also face challenges managing tenants and maintaining rental properties. UCLA lecturer and apartment owner Paul Habibi has been a vocal critic of the RSO, stating that landlords are less likely to make improvements to RSO units because they may not be able to recover their investments. While some landlords are unable to afford repairs, others are unaware of repairs for which they are responsible. However, the Systematic Code Enforcement Program (SCEP) has helped landlords identify the repairs and maintenance they are required to make. Nearly half of the property owners surveyed in the Economic Roundtable report found that SCEP was very helpful for identifying needed maintenance or was a useful service.

Tenant Rights and Education

One of the largest challenges of the implementation of the RSO is the lack of awareness of the ordinance and the rights it grants tenants and landlords. In our qualitative interviews, tenant advocacy groups repeatedly shared that most tenants are unaware of their unit's RSO status and of RSO protections. Similarly, the Economic Roundtable report found that 34% of Los Angeles renters did not know whether their units were covered by the RSO. Surveys in the report also found that 29% of renters in the City of Los Angeles and 33% of South Los Angeles renters were unaware that the RSO limits rent increases. Consequently, tenants were afraid to speak out because they did not know their rights. Without knowing their rights, tenants are less likely to file complaints to HCIDLA and are unable to self-advocate.

Various factors, including their immigration status, language ability, and income, can influence if an RSO tenant is aware of his or her rights. Three tenant groups we interviewed indicated that immigrants and people with limited English are less likely to know their rights. In addition, the Economic Roundtable report found that the majority of renters with limited English were unaware of the RSO's limits on rent increases.

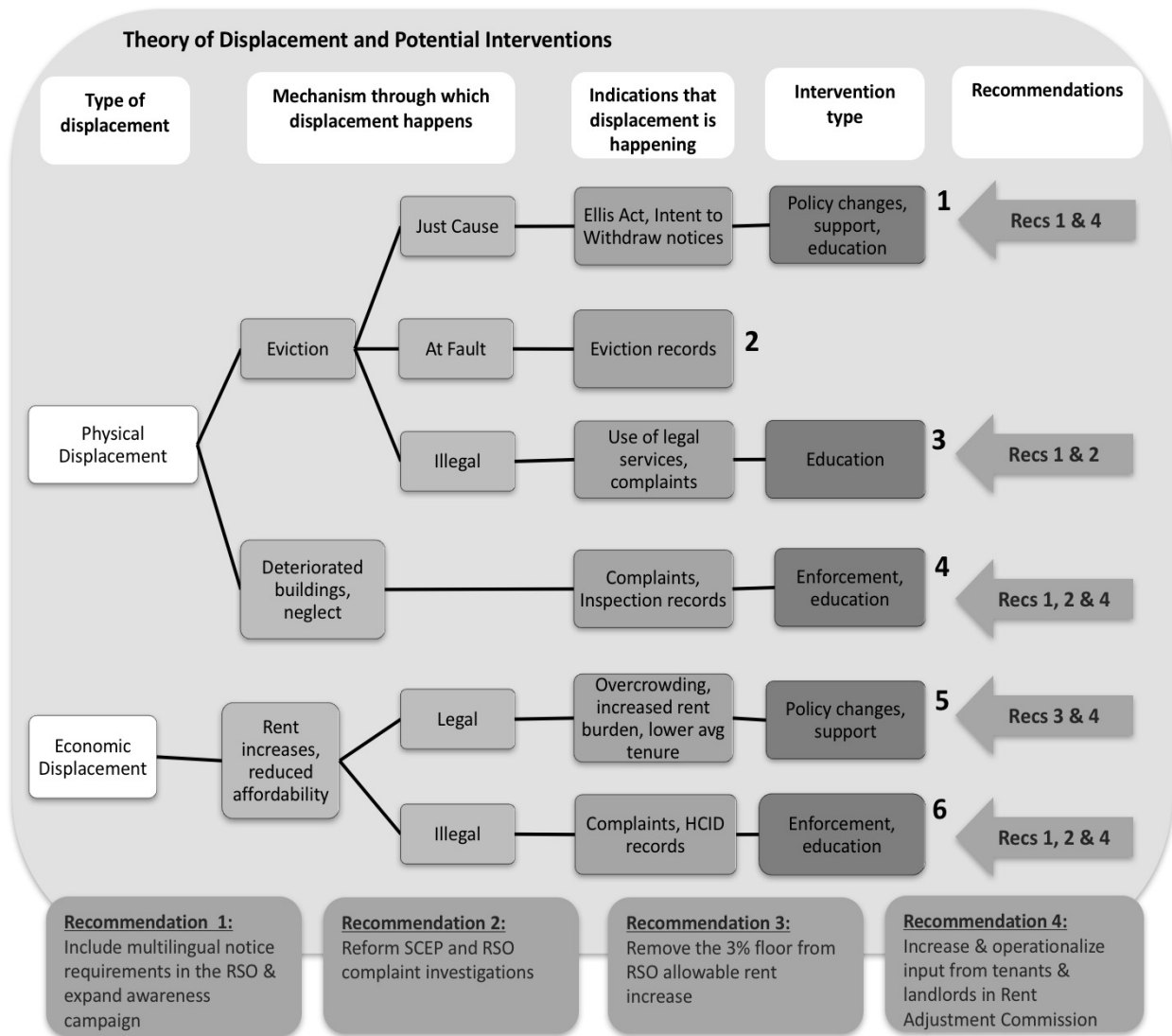
In South Los Angeles, 63% of residents speak a language other than English, and of these individuals 49% speak English "less than well." A local tenant rights' advocate shared that tenants often only receive letters in English and are asked to sign paperwork, which is problematic if they do not understand English. The advocate also described how immigrants she works with are often thankful to have a place to live. This might cause them to pick up and move if they experience harassment from their landlord, rather than file a complaint.

In addition to language barriers, income is also associated with a tenant's level of awareness and understanding of their rights. Renters with higher incomes are more likely to know that the RSO limits rent increases and are also more aware of the fourteen just cause reasons for eviction. With a median income of \$27,000—\$11,000 less than the city's median income—South Los Angeles residents are less likely than others to be aware of the rights provided by the RSO. To address the need for tenant education, the local advocacy groups we interviewed organize tenant clinics or provide individual counsel to tenants. SAJE and LAFLA both said that once tenants are educated, they are able to organize and self-advocate to improve their housing situation.

Policy Recommendations

To address the issues that we identified in our analysis of the RSO, we developed policy options that would strengthen the administration of the RSO, and ultimately promote housing stability for vulnerable renters in South Los Angeles. We narrowed our recommendations to include only those that seem politically, financially and administrative feasible and that have significant potential to deliver a positive and direct impact on renters. Figure 7 adds to our theory of displacement by including interventions that can mitigate the negative outcomes of displacement and showing how our recommended policy options support these interventions.

Figure 7: Theory of Displacement and Potential Interventions



Recommendation 1: Require multilingual notices and expand the “Home for Renters” campaign

Qualitative interviews and secondary research show that many instances of displacement, both economic (pathway 6) and physical (pathways 1, 3 and 4), could be avoided if tenants were aware of the protections provided by the RSO. Therefore, more efforts are needed to expand renter awareness of the RSO, including the addition of multi-language resources. These efforts should be focused most on reaching renters with the least awareness, including low-income and non-English speaking renters.

Currently, the RSO only requires two documents to be offered in languages other than English: the notice of RSO status and a notice of eviction. Requiring HCIDLA to translate all

communications into Spanish, Chinese, and Korean would improve effectiveness of services. In addition to English, these languages cover 96% of households and 73% of English-limited households. HCIDLA can share translated templates of the most common landlord correspondences, including notices for repairs, maintenance, and rent increases. HCIDLA can also facilitate requests for translation services for languages or communications not covered by templates. HCIDLA currently hires contractors for translation services to support its tenant relocation services; these translation services could be used to translate notices.

There are over 25,000 households in South Los Angeles with limited English proficiency, the majority of whom are covered by the RSO. This option has the potential to affect many of these renters by providing information in an accessible language. In addition to translation requirements, the city should improve and expand available information and conduct targeted outreach to those who need it most.

In July 2016, Mayor Garcetti, in partnership with HCIDLA, launched the “Home for Renters” campaign to increase awareness of the RSO using pamphlets, door hangers, and advertisements. The campaign was funded by Bloomberg Philanthropies in partnership with the Mayor’s Fund for Los Angeles. Despite this effort, lack of education of rights remains a challenge for tenants. Larry Gross of CES said that the city’s campaign felt like a “one-day event” and that materials were illegible and difficult to comprehend. Disparities in education of the RSO also vary among different ethnic groups, with non-native speakers less likely to know of RSO limits on eviction, and rent increases, or their apartment’s RSO status.

We recommend that the mayor’s office partner with community stakeholders to revamp its campaign to be more focused, more accessible, and ongoing. It can collaborate with community-based organizations as well as landlords to create culturally inclusive materials with relevant content. These materials should be translated into Spanish, Chinese, and Korean to cover the majority of renters in Los Angeles. Community-based organizations serving renters at risk of displacement (non-English speakers, immigrants, seniors, less-educated tenants, etc.) can distribute these materials and develop education programs to educate tenants of their rights.

Recommendation 2: Reform SCEP and RSO Complaint Process

Our qualitative findings suggest that landlords of RSO buildings do not adequately maintain buildings to meet the standards in codes required by city and state law. Tenants have interpreted this neglect of maintenance as pressure from their landlord to move out of their units (pathway 4). Complaint-driven RSO investigations along with routine SCEP inspections are key mechanisms by which the city can intervene to support the rights of RSO tenants and ultimately enforce these kinds of landlord violations.

Effective administration of the RSO complaint system is key to protecting tenants from illegal economic or physical displacement. HCIDLA receives over 7,000 complaints per year for RSO violations, far more than they can respond to given current resources. As of February 28, 2017, there were 1,696 pending RSO complaint cases. The most common complaints were unlawful

increases in rent (pathway 6) and deceptive eviction notices (pathway 3). Ensuring complaints are settled accurately and efficiently is critical to protecting vulnerable tenants from physical displacement and illegal eviction.

SCEP was established to ensure renters have "a safe, livable space" that meets health and safety codes. Administered by HCIDLA, SCEP identifies and remedies substandard residential buildings through scheduled and complaint-driven inspections. Among RSO properties inspected through SCEP, 67% had violations. Tenants and landlords also complain that when inspections are made, variation among inspectors leads to inconsistent inspection findings.

Inconsistent code inspections and delayed investigations mean that tenants may be living in uninhabitable conditions for prolonged periods. This situation is especially important for South Los Angeles, as it has a disproportionate share of violations. South Los Angeles has 18% of the city's rental units, but 33% of its violations. To address inconsistent and infrequent inspections, HCIDLA could hire additional inspectors and develop training and mentoring programs so that all inspectors perform at the level of the best workers. HCIDLA should also hire additional RSO investigators to address the backlog of open RSO complaints and speed up the complaint resolution period.

Recommendation 3: Remove the 3% floor from the RSO

Even with the RSO's protections, renters are still getting economically displaced by regular rent increases (pathway 5). Based on our quantitative findings, RSO tenants have received more frequent rent increases and have experienced higher overall rent growth over the last decade. The intent of the original RSO legislation is to balance the interests of renters and owners, allowing for reasonable profits, while protecting tenants from excessive rent hikes. In times when CPI is below 3%, market-rate rents may rise at a lower rate than RSO units. To have rent increases for stabilized units that are higher than market-rate units is contrary to the legislative intent of the RSO. Annual CPI increases were below 3% for 14 of the years since 1978.

City Council should change the policies for allowable rent increases. It should eliminate the 3% floor, and instead cap the maximum increase to the annual increase in CPI but still maintain the 8% ceiling. This change would be more consistent with the ordinance's original purpose and would be more aligned with other cities' implementation of rent stabilization.

Recommendation 4: Engage Tenants, Landlord and Community Organizations in Rent Adjustment Commission Meetings

In Los Angeles, the Rent Adjustment Commission (RAC), a six-member board, is responsible for making recommendations to City Council for changes to the RSO and advising HCIDLA on the implementation of the RSO. It holds bi-weekly appeal hearings to adjudicate disputes between tenants and landlords. RAC commissioners are appointed by the mayor and confirmed by City Council. Commissioners may not be landlords or tenants of residential rental properties.

Los Angeles is the only jurisdiction with rent stabilization we found that explicitly prevents direct representation of tenants or landlords in its Rent Adjustment Commission. Most U.S. cities with rent control ordinances have a board that oversees the implementation and enforcement of rent stabilization. Most boards appoint commissioners to provide a balance between tenant and landlord perspectives. Rent Boards in New York City, Oakland, and San Francisco all have designated positions for landlords, tenants, and neutral representatives.

While Los Angeles' restriction prevents potential conflicts of interest, it also means RAC is missing a first-hand understanding of the issues facing renters and landlords. Currently, members of the public can give comments at commission meetings on issues affecting the RSO. According to Commissioner Jane Paul, one of the six commissioners, the board typically only becomes aware of issues after a tenant or landlord presents at these meetings. The piecemeal fashion by which commissioners learn about issues compromises their ability to enforce and administer the RSO effectively.

In order to address this limitation, HCIDLA can coordinate quarterly RAC meetings for tenant and landlord groups from around the city so that they can share their concerns and challenges regarding the RSO. The issues presented would be included in the commission's quarterly reports and be made available on HCIDLA's webpage. This policy option would improve the implementation and enforcement of the RSO. The impact would be widespread, but gradual.

Limitations and Conclusion

We began our research with an interest in displacement and the potential role of the RSO in mitigating its effects in South Los Angeles. Based on our data analysis, qualitative interviews, and secondary research, we recommend policy options that will help inform tenants, landlords, and city officials to understand the RSO better and the rights it provides. Tenant groups will be better equipped to advocate for themselves and to secure their rights under the ordinance. City officials will also become more aware of the experiences of tenants and landlords, and especially their challenges and issues. These recommendations would not make fundamental changes to the RSO, but would increase the fidelity of its execution. The recommendations may prevent instances of illegal eviction and unjust displacement, but do not address the systemic causes of displacement.

Our research has highlighted the challenges of the RSO and its implementation, the struggles RSO tenants face despite its protections, and the limitations of the RSO as an anti-displacement policy. The RSO was intended to protect tenants from excessive rent increases while also preserving landlords' ability to earn reasonable returns. But its current implementation puts tenants' protections at odds with landlords' returns. In addition, the RSO rental stock is shrinking due to restrictions from state law.

The RSO's impact is especially limited in responding to the current housing shortage because new units are not covered. In the context of rising rents, the benefits of the RSO are thus not sustainable; long-term renters will be at risk of displacement and long-term landlords will be incentivized to leave the RSO rental market. Therefore, while the RSO was created to preserve

housing affordability and has emerged as an anti-displacement policy, it is still limited in its potential to mitigate the displacement of renters in South Los Angeles.

Glossary

Costa-Hawkins Act	A California state law passed in 1995 that prevents local governments from amending their rent stabilization ordinances to include units that were not covered prior to 1995. It also allows owners to reset rents to market rates once units have been vacated (see vacancy decontrol)
Consumer Price Index (CPI)	An index of the changes in the cost of goods and services to a typical consumer, based on the costs of the same goods and services at a base period
Displacement	A process that occurs when housing or neighborhood conditions force residents to move. Physical displacement occurs when deteriorating building conditions pressure residents to move, property is removed from the housing market, or tenants are evicted. Economic displacement occurs when rising costs pressure residents to move
Ellis Act	A California state law passed in 1985 which allows landlords the unconditional right to evict tenants to take their building off the rental market (only applies to rent stabilized units)
Exclusionary Displacement	Exclusionary displacement occurs when a housing unit is vacated voluntarily and then is gentrified, preventing another similar household from moving in
Gentrification	A process when capital and higher-income, higher-educated residents move into working-class neighborhoods
Habitability	Refers to conditions that determine whether a rental unit is fit for occupation and complies with state and local building and health codes that affect tenants' health and safety
Housing and Community Investment Department (HCIDLA)	A department in the City of Los Angeles that oversees the implementation of the RSO among other housing and neighborhood programs
Housing Inspector	HCIDLA staff responsible for investigating code complaints and conducting Systematic Code Enforcement Program (SCEP) inspections
Housing Investigator	HCIDLA staff responsible for investigating RSO complaints
Just Cause Eviction	Fourteen legal reasons a landlord can evict a tenant. These reasons are divided into cases where the tenant is at-fault (e.g. failing to pay rent) and when tenants are not at-fault (e.g. landlord wants to convert building to affordable housing)

Rent Adjustment Commission	An HCIDLA board that is responsible for adopting policies, rules and regulations to carry out mandates of the RSO. They also conduct studies, investigations, and hearings to gather information to administer and enforce the ordinance
Rent Burdened	When a tenant pays over 30% of their income on rent
Rent Stabilization Ordinance (RSO)	An ordinance of the City of Los Angeles that regulates rent increases for units built before October 1, 1978. It also provides tenants of units covered by the RSO certain protections, especially for illegal evictions and rent increases
Systematic Code Enforcement Program (SCEP)	A program operated by HCIDLA that conducts periodic inspections of residential rental units in Los Angeles. SCEP also verifies compliance with applicable building and housing codes
Tenure Discount	The difference between the annual rent increases tenants receive and the annual increase in market rate rents. This discount is known to increase over time
Transit-Oriented Development (TOD)	Commercial and residential districts built around mass transit stations or corridors designed to encourage ridership on buses and trains
Vacancy Decontrol	A regulation established by the Costa-Hawkins Act that allows owners to reset rents to market rates once a unit has been vacated

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Chapter 5

Charter School Segregation in California and in the Los Angeles Unified School District

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California has the most segregated schools for Latino students of any state in the country, and it is one of the states with the most segregated schools for black students. Across the state, students of color experience segregation not only in traditional public schools (TPSs) but also in charter schools. Over the 25 years since California's charter sector was created in 1992, it has expanded rapidly. Charter schools often claim to offer special opportunities for students of color, and unlike TPSs, they are not restricted by neighborhood boundaries or district lines.

This chapter examines whether charter schools have been more or less successful than TPSs in providing non-segregated schooling and the solid advantages that research shows are offered by an integrated education. It finds that charters have not done better, and at the extreme level of racial separation, charters are even worse. If California is going to have a constantly growing charter sector, this analysis suggests some ways that state policy could foster more positive outcomes.¹

Background

As of 2017, 43 states and the District of Columbia have enacted charter school legislation. In 2016-17, there were 6,939 charter schools serving more than 3 million students nationwide (National Alliance for Public Charter Schools, 2017). California holds a prominent position in the charter school movement as the second state in the nation to approve charter school legislation in 1992. The state currently has more charter schools than any other, with 1,228 charter schools in 2015-16. Within the state, Los Angeles Unified School District (LAUSD) has more charter schools than any other district (California Charter Schools Association, 2016).

Charters vs. TPSs

Charter schools are a lightning rod for debate, both in the public sphere and in educational research. There is controversy over the validity of the premise that charter schools provide choice and competition to TPSs, and thus improve the school system. This debate

¹ This chapter is based on Ayscue, J. B. (2016). *Trends, policies, and practices related to racial, socioeconomic, and linguistic segregation in California's charter schools, 1998-2013*. (Doctoral dissertation). UCLA: Education 0249. Retrieved from <http://escholarship.org/uc/item/3xx219zr>.

questions whether the drive to privatize public education through an autonomous system of charter schools leads to better outcomes. There is also debate as to whether such a system is fair and equitable because charter schools receive some of the resources that would have otherwise been allocated to TPSs, with a particular concern about for-profit charter schools that receive public funding.

Another issues is that charter schools serve a different population of students and do not necessarily enroll all the various students that public schools enroll. For example, English learners (ELs) and students with disabilities may end up disproportionately enrolling in TPSs. Inconclusive findings on whether or not the academic performance of charter schools is superior to that of TPSs also contribute to the debate regarding the charter movement. Despite these controversies in the public sphere and educational research, policies of both Republicans and Democrats have supported the growth of charters since their inception in 1991. However, these policies merit careful attention, as unregulated choice in the form of charter schools can result in segregation, a crucial consideration in the controversy over the charter school movement.

School Segregation and Educational Outcomes

Segregated schools raise concerns because decades of social science research demonstrate that segregation is associated with unequal educational opportunities and outcomes whereas diverse schools are linked to important benefits for students of all races (Linn & Welner, 2007; Mickelson & Nkomo, 2012). In segregated schools, teachers are often less experienced and less qualified than in desegregated schools (Clotfelter, Ladd, & Vigdor, 2005; Jackson, 2009). In addition, teacher turnover rates are higher (Clotfelter, Ladd, & Vigdor, 2010), student mobility is greater (Rumberger, 2003), and the facilities, resources, and curricular options are frequently less extensive in segregated schools (Yun & Moreno, 2006). Perhaps not surprisingly, segregated schools tend to have lower academic achievement, higher dropout rates (Balfanz & Legers, 2004), and lower graduation rates (Swanson, 2004).

Conversely, in desegregated schools, there are myriad benefits, such as higher academic achievement (Mickelson, Bottia, & Lambert, 2013; Mickelson, Bottia, Larimore, & Lambert,

2016) and reduction in prejudice and stereotypes (Allport, 1954; Tropp & Prenevost, 2008). There are also long-term beneficial effects. Such outcomes include greater likelihood of living and working in diverse environments later in life (Braddock & McPartland, 1989; Wells & Crain, 1994), increased educational and occupational attainment, health benefits, and reduction in adult poverty and incarceration (Johnson, 2011).

In addition to the research literature, legal guidance from the Department of Education and the Department of Justice (2011) continues to affirm the importance of racial diversity. The guidance suggests ways that school districts can work within the current legal framework to reduce racial isolation in schools. Given the legal guidance in support of racial diversity and the research demonstrating the harms of segregation and the benefits of desegregation, it would be prudent to implement charter school policies that will lead to diversity rather than segregation.

Desegregation Potential

As schools of choice, charter schools have the potential to create desegregated learning environments because in most cases, charters are not restricted to enrolling students from specific catchment areas and can instead enroll students from across school district lines. This feature of charter schools makes it feasible for them to enroll diverse student bodies that would provide students with the benefits associated with desegregated learning environments. As an early pioneer of charter schools in the United States and with such a large charter enrollment currently, California, and LAUSD in particular, are optimal locations for conducting research on charter schools. Therefore, this chapter explores the question: *How does racial, socioeconomic, and linguistic segregation in California and LAUSD's charter schools compare to that of the state and district's TPSs?*

The California Charter Movement

Charter legislation, which specifies the number of charter schools allowed in a state and provides guidelines for their operation, varies among states. In November 1992, a statewide voucher initiative, which was supported by the business community but opposed by teachers'

unions, was placed on the California ballot. A more universally appealing alternative was presented through the charter school bill. With support from teachers unions at the time, this bill was introduced into legislation, and the Charter School Act of 1992 was passed in California. It made California the second state to adopt charter legislation, following Minnesota in 1991.

California's charters have multiple goals, including improving student performance, requiring school accountability, providing teacher opportunities, developing innovations in education programs, and creating public school competition (Wohlstetter, Smith, & Farrell, 2013). Originally, California had a cap of 100 charter schools statewide, and no more than 10 charters were permitted per school district. This limitation was negotiated with the teachers' unions so that charters would not be in competition with TPSs but would serve as lighthouses for experimentation and innovation. However, the statewide cap was removed in 1995 and the district cap was removed several years later, moving charter schools into competition with TPSs.

Since 1992, charter policy in California and LAUSD has allowed for substantial variation among charter schools and significant growth in the charter sector. During this same time period, segregation in the state's public schools, including charters, increased.

Trends Toward Increasing Racial, Socioeconomic, and Linguistic Segregation

Since the peak of desegregation in the mid-1980s, segregation by both race and poverty has intensified across the nation (Orfield & Frankenberg, 2014). The share of intensely segregated minority schools in California—those in which 90-100% of school enrollment is comprised of minority students—doubled between 1993 and 2012. In 2012, the typical black student and the typical Latino student attended schools with half as many white and Asian peers as the typical white or Asian student (Orfield, Ee, & Ayscue, 2015).

California's students were also segregated by poverty; the typical black or Latino student attended a school that was 66-71% low income while the typical white or Asian student attended a school that was only 39-44% low income. Experiencing a triple segregation by race, class, and language, the typical EL in California attended a school that was 75% black and Latino, 74% low income, and 38% EL, even though ELs accounted for only 22% of the state's

total enrollment in 2012. These findings demonstrate that public schools in California are segregated by race, class, and language, and these forms of segregation have increased over the last 20 years.

Focusing specifically on charter schools, research has consistently found that charter schools tend to be racially segregated (Garcia, 2007; Mickelson, Bottia, & Southworth, 2008). A national study found that charters were more likely than TPSs to be located in urban areas, enroll high concentrations of black and Latino students, and enroll a majority or extremely high proportion of low-income students (Frankenberg, Siegel-Hawley, & Wang, 2010a). Another national analysis focusing on central cities found that charter students were more likely to attend hypersegregated minority schools—those that are 99-100% non-white—than were their peers in the cities' TPSs (Ritter, Jensen, Kisida, & McGee, 2010). Earlier studies of California's charter schools found that Latino students were underrepresented in charters while black and white students were overrepresented (Frankenberg, Siegel-Hawley, & Wang, 2010b; Center for Research on Education Outcomes, 2014).

Evidence regarding the enrollment and segregation of low-income students in charter schools is inconclusive. The national evaluation of the Public Charter Schools Program found that between 1999 and 2002, charter schools enrolled larger shares of poor students than did TPSs (Finnigan et al., 2004). A 2007 national analysis reached the same conclusion (Frankenberg et al., 2010a).² A similar pattern was identified in California (Center for Research on Education Outcomes, 2014). However, an analysis of 13 states that enroll 75% of the nation's charter students found little support for the claim that charter schools tend to serve a more economically disadvantaged population but rather that minority charter school students are more economically advantaged than their TPS counterparts (Carnoy, Jacobsen, Mishel, & Rothstein, 2005). In California, within each racial group, charter school students were less likely to be socioeconomically disadvantaged (defined as being eligible for free-and-reduced-price lunch [FRL] or having no parent who completed high school) compared to students in TPSs.

²These findings should be interpreted with caution, as researchers identified significant gaps in charter schools' reporting of FRL data. This concern persists as a limitation for analyzing socioeconomic segregation in charters; however, the most recent data show that by 2013, the proportion of charter schools missing FRL data had declined, allowing for a more thorough and updated analysis of segregation by socioeconomic status in charter schools (National Center for Education Statistics, 2014).

There are also disparities between charter schools and TPSs in serving ELs, with charter schools enrolling smaller shares of ELs than their TPS counterparts. A study of 27 states found that 9% of charter students were ELs compared to 13% of students in feeder TPSs (the schools from which charter students transferred) and 10% in all TPSs (Cremata et al., 2013). With higher overall percentages, a similar pattern also existed in California (Center for Research on Education Outcomes, 2014).

Taken together, the previous studies indicate that there are significant differences in the populations of students who are enrolled in charter schools compared to those who are enrolled in TPSs. To build upon this knowledge about enrollment patterns in charters versus TPSs, additional analysis of segregation trends is needed. We examine additional findings below.

Methodology

This chapter compares trends in segregation by race, socioeconomic status, and linguistic background in California's charter schools and TPSs from 1998 to 2013 at the state level as well as for LAUSD.³ Enrollment and segregation were analyzed using school-level variables of racial/ethnic composition, socioeconomic composition (as measured by FRL status), and linguistic composition (as measured by EL status). Enrollment data by racial/ethnic group and FRL were obtained from the National Center for Education Statistics (NCES) Common Core of Data (CCD), Public Elementary/Secondary School Universe Survey and Local Education Agency data files. EL data were obtained from the English Learners by Grade and Language data files of the California Department of Education (CDE).

To explore trends in enrollment and segregation, descriptive analyses were conducted using two measures of segregation—concentration and exposure/isolation. “Concentration”

³Due to variations in the availability and completeness of data for each variable in each locale, the time spans for which segregation trends are analyzed varies. At the state level, race and poverty variables are available for 1998-2013. However, in 2011, there is a substantial proportion of missing data; therefore, results of poverty data in 2011 are not presented. EL data are available and a substantial proportion of schools (90%) reported EL data at the state level beginning in 2011. For LAUSD, race and poverty data are available beginning in 1998. However, in 2011, a substantial portion of FRL data is missing; therefore, poverty data are not presented for 2011 in LAUSD. EL data are available and a substantial proportion of schools in LAUSD reported EL data beginning in 2007. However, in 2010, none of the TPSs in LAUSD reported EL data; thus, results for language in 2010 in LAUSD are omitted.

refers to the proportion of students in a school who share a characteristic that places them in a specified racial/socioeconomic/linguistic group. For each school enrollment, a range of racial/socioeconomic/linguistic characteristics was measured at three levels of concentration: majority segregated (50-100% of school enrollment has specified characteristic), intensely segregated (90-100%), and hypersegregated (99-100%).⁴ “Exposure” refers to the degree of potential contact between students of one racial/socioeconomic/linguistic group and another racial/socioeconomic/ linguistic group. “Isolation” refers to the degree of potential contact between students of one group and other members of the same group (Massey & Denton, 1988).

Both the measure of exposure and the measure of isolation range from 0 to 1. Lower values on the index of exposure and higher values on the index of isolation indicate greater segregation. For example, if Latino exposure to white students has a value of 0.1, it indicates that the typical Latino student is exposed to 10% white students; in other words, the typical Latino student attends a school in which he or she has 10% white schoolmates.

California Enrollment and Segregation by Race

As California’s charter enrollment has increased, the enrollment in TPSs has decreased (Table 1). Both the number of students and the number of schools in the charter sector have been increasing. The number of charter schools in California has increased from 145 in 1998 to 1,132 in 2013. Over the same time period, the number of TPSs increased from 1998 to 2006, then decreased through 2013, with the number of TPSs at the three time points shifting from 8,198 to 9,350 to 9,157.

Similarly, the number of charter students has increased every year from 1998 through 2013 when 513,350 students attended charter schools. Charter enrollment has increased 657%

⁴The interpretation of these three levels of segregation varies by race, poverty, and language. For example, a school that enrolls a majority of students of color is segregated, but given the racial enrollment of the state’s public schools, this level of segregation is not extreme. The same is true for low-income students. Thus, intensely segregated and hypersegregated schools are particularly important indicators of segregation by race and poverty. However, for segregation by language, the concentration of ELs in a school that is majority EL is an important indicator of segregation and would be considered quite extreme. The results should be interpreted with these flexible understandings of three levels of segregation depending on which dimension of segregation—race, poverty, or language—is being analyzed.

during this time period. In the state's TPSs, the number of students increased from 1998 through 2004 but has been declining since then. In 2013, 5,702,436 students attended TPSs. Although charter schools are growing and TPSs are declining, the vast majority of the state's students (92%) still attended TPSs in 2013.

Table 1

Number of Schools and Students, California

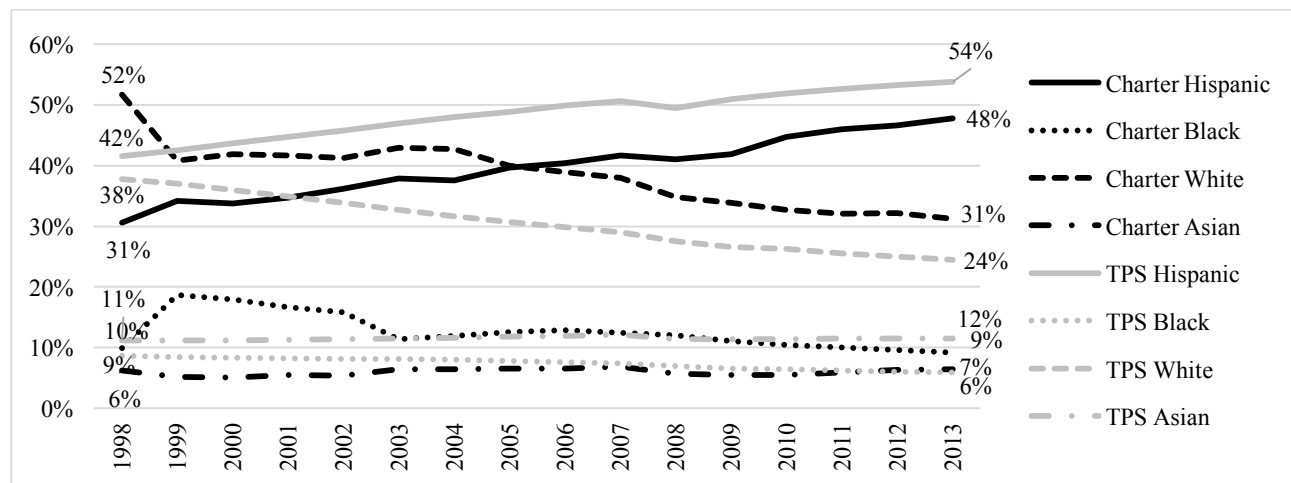
	Charters			TPSs			All Schools
	Schools	Enrollment	% of Total Enrollment	Schools	Enrollment	% of Total Enrollment	Enrollment
1998	145	67,853	1%	8,198	5,777,307	99%	5,845,160
1999	238	104,730	2%	8,340	5,847,868	98%	5,952,598
2000	302	115,582	2%	8,471	5,935,313	98%	6,050,895
2001	350	132,807	2%	8,566	6,014,568	98%	6,147,375
2002	409	156,696	3%	8,691	6,087,707	97%	6,244,403
2003	444	166,208	3%	8,779	6,132,720	97%	6,298,928
2004	495	177,642	3%	8,978	6,144,944	97%	6,322,586
2005	543	195,876	3%	9,107	6,116,227	97%	6,312,103
2006	714	231,004	4%	9,350	6,043,809	96%	6,274,813
2007	701	241,017	4%	9,292	5,829,411	96%	6,070,428
2008	789	284,986	5%	9,321	5,955,198	95%	6,240,184
2009	847	316,658	5%	9,280	5,849,991	95%	6,166,649
2010	948	363,916	6%	9,232	5,844,043	94%	6,207,959
2011	1,018	413,124	7%	9,197	5,789,738	93%	6,202,862
2012	1,135	470,880	8%	9,250	5,742,314	92%	6,213,194
2013	1,132	513,350	8%	9,157	5,702,436	92%	6,215,786

Source: National Center for Education Statistics, Common Core of Data.

Charter schools enroll a larger share of white and black students but a smaller share of Hispanic and Asian students than TPSs (Figure 1). Although the proportion of each race has changed over time, the overall pattern has remained the same since 1998. In 2013, charter

enrollment was 48% Hispanic, 31% white, 9% black, and 7% Asian while TPS enrollment was 54% Hispanic, 24% white, 6% black, and 12% Asian.

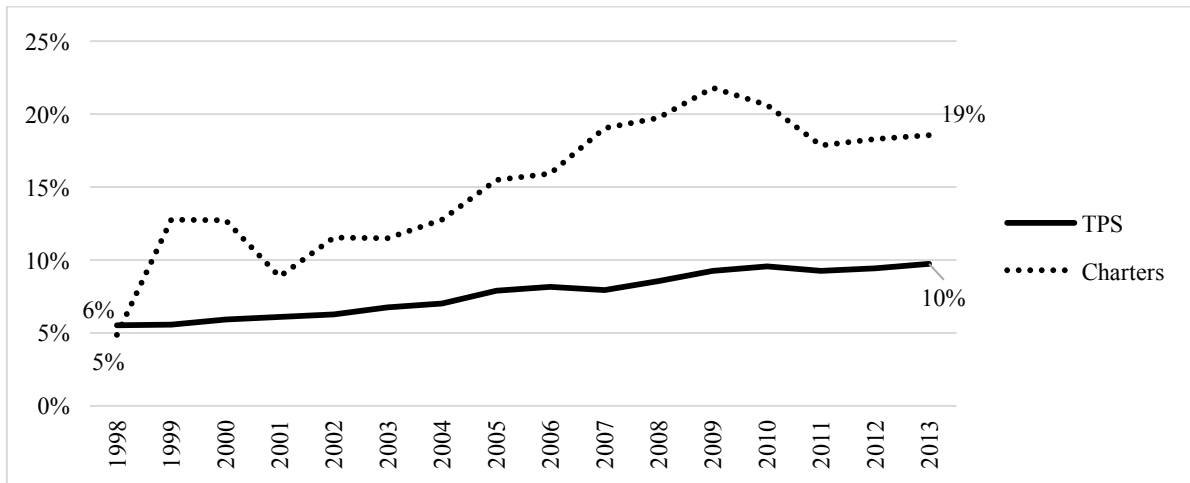
Figure 1. Enrollment by Race, Charters and TPSs, California



Source: National Center for Education Statistics, Common Core of Data.

At the state level, the share of segregated minority schools is increasing in both charters and TPSs, and the increase is more extreme in the charter sector. The share of both charter schools and TPSs that are intensely segregated—schools that enroll 90-100% nonwhite students—has been similar and increasing such that in 2013, 38% of both charters and TPSs were intensely segregated. At the most extreme level, the share of hypersegregated schools—schools that enroll 99-100% nonwhite students—is generally increasing among both charters and TPSs (Figure 2). Charters have consistently had a larger share of hypersegregated schools than TPSs. In 2013, the share of charter schools that were hypersegregated (19%) was almost twice as large as the share of hypersegregated TPSs (10%).

Figure 2. Percent of 99-100% Non-White Schools, California

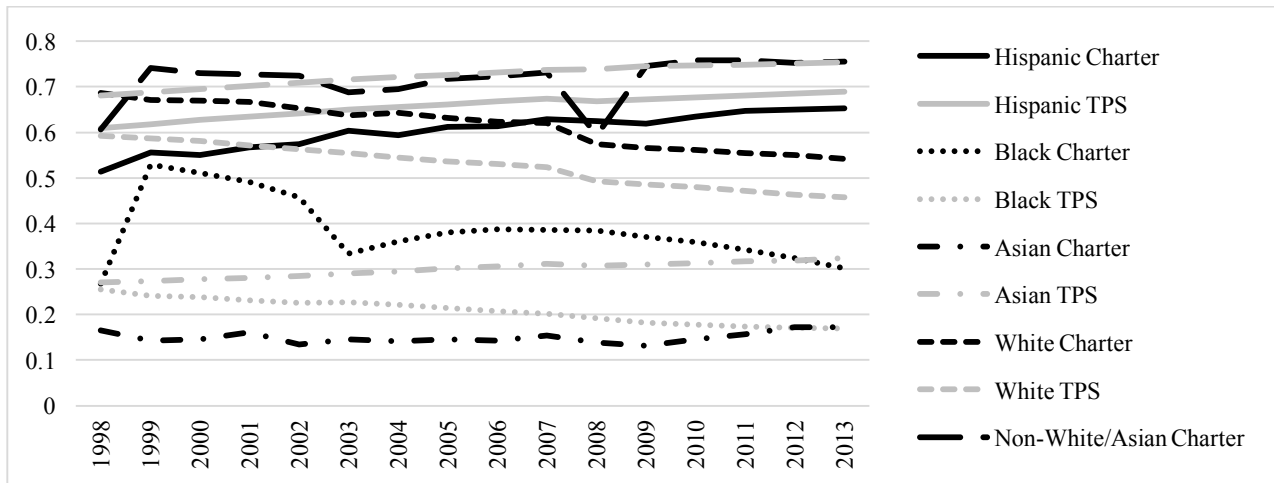


Source: National Center for Education Statistics, Common Core of Data.

While there was also a larger share of segregated white schools that enrolled 90-100% white students in the past, this type of school is becoming less common in both charters and TPSs. In 1998, 12% of charters and 4% of TPSs were segregated white schools but by 2013, only 1% of charters and TPSs enrolled 90-100% white students.

Although Hispanic enrollment is growing statewide, Hispanic students remain underrepresented in the state's charter schools, and conversely, while the white share of enrollment is shrinking statewide, white students remain overrepresented in charter schools. Both the typical black and the typical white student are more isolated with same-race peers in charter schools than in TPSs. However, the typical Hispanic student and the typical Asian student are less isolated with same-race peers in charters than in TPSs (Figure 3). As a combined group, the typical Hispanic or black student is isolated with other Hispanic and black students at similar levels in charters and TPSs.

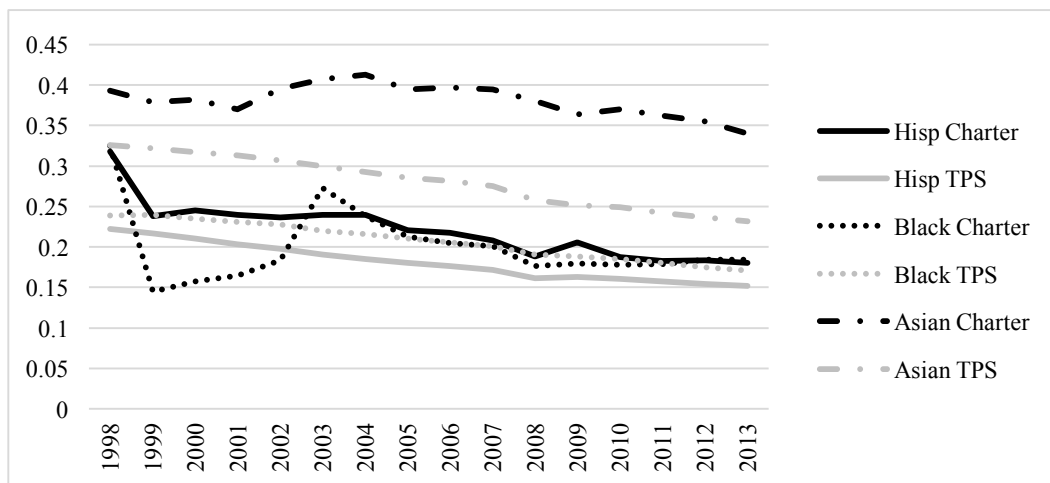
Figure 3. Isolation by Race, California



Source: National Center for Education Statistics, Common Core of Data.

Regarding exposure to white students, the typical Hispanic and the typical Asian student are exposed to a larger share of white students in charters than in TPSs (Figure 4). These differences are likely related to the slightly larger share of black and white enrollment and smaller share of Hispanic and Asian enrollment in charters. In both charter schools and TPSs, Hispanic students are the most segregated and Asian students are the least segregated of all racial groups. Taken together, these results reveal that segregation by race is intensifying in both charter schools and TPSs in the state of California. A larger share of charters is more extremely segregated than TPSs.

Figure 4. Exposure to White Students by Race, California

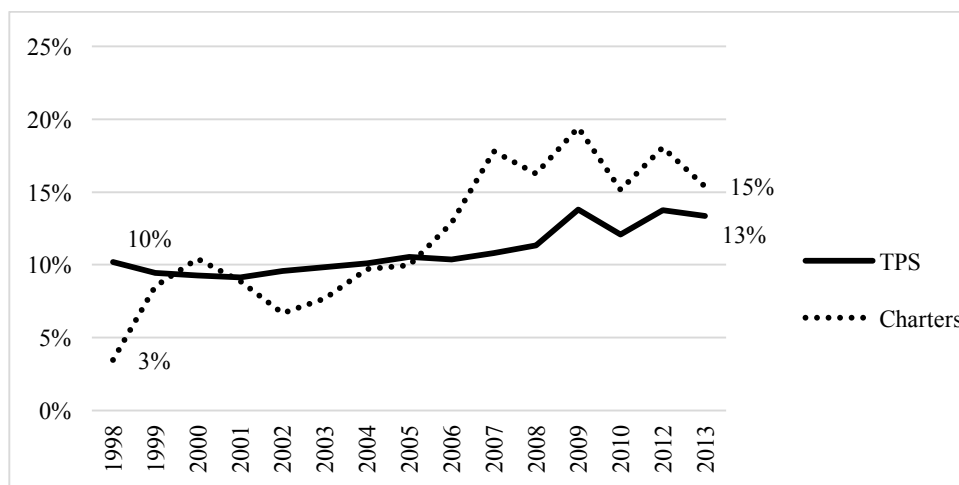


Source: National Center for Education Statistics, Common Core of Data.

California Enrollment and Segregation by Poverty

In terms of poverty, while the share of low-income students is increasing statewide, low-income students remain slightly underenrolled in charter schools. In 1998, low-income students accounted for 47% of TPS enrollment but only 25% of charter enrollment. However, this disparity has been narrowing such that in 2013, TPSs enrolled 58% low-income students and charters enrolled 55% low-income students. Yet, since 2005, charter schools have had a slightly larger share of intensely segregated low-income schools (15% in 2013) than TPSs (13% in 2013). This pattern that is particularly noteworthy given the smaller share of low-income students who attend charters. The trend suggests that those low-income students who are enrolled in charters tend to be concentrated together with other low-income students.

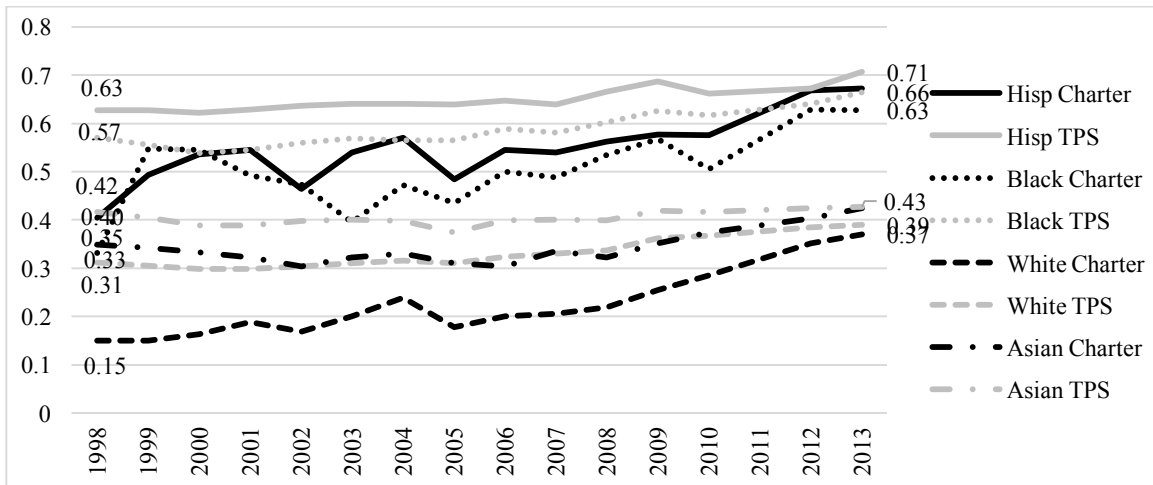
Figure 5. Percent of 90-100% FRL Schools, California



Source: National Center for Education Statistics, Common Core of Data.

In both charters and TPSs, students of color experience a double segregation by race and poverty (Figure 6). This double segregation is more extreme in TPSs, which is likely related to the larger share of low-income students who attend TPSs. In 2013, the typical Hispanic or black student in both charters and TPSs was exposed to 1.5-2 times as large a share of low-income students as the typical white or Asian student. Of all racial groups, Hispanic students experience the most intense double segregation.

Figure 6. Exposure to FRL Students by Race, California



Source: National Center for Education Statistics, Common Core of Data.

California Enrollment and Segregation by Language

With regard to language, charter schools enroll a disproportionately small share of ELs compared to TPSs (Table 2). In part related to this disparity in EL enrollment, a smaller share of charters (9%) than TPSs (15%) enrolls a student body that is majority EL. Most charters (67%) enroll between 0 and 20% ELs.

In general, ELs are more isolated with other ELs and less exposed to white students than non-ELs in both charters and TPSs, with slightly larger disparities in exposure between ELs and non-ELs to other ELs and white students in charter schools. The extent to which ELs are segregated by poverty is similar in both charters and TPSs. Thus, California's EL students experience a triple segregation by race, poverty, and language.

Table 2. EL Enrollment, California

	Charters	TPS
2011	17%	23%
2012	16%	22%
2013	17%	23%

Source: California Department of Education, English Learners by Grade and Language.

LAUSD Enrollment and Segregation by Race

Turning to LAUSD, the data show that the district's overall enrollment has been shrinking. However, the charter share of enrollment has been increasing (Table 3). In 2013, there were 735 TPSs and 254 charter schools in LAUSD. Between 1998 and 2013, the number of students attending charters increased by 1129% from 11,131 students to 136,831 students. Conversely, the number of students attending TPSs decreased by 25%, from 684,754 in 1998 to 513,789 in 2013.

Throughout the past 16 years, charter schools have been capturing an increasingly large share of LAUSD's student enrollment. In 1998, only 2% of LAUSD's students attended charters. But in 2013, 21% of the district's students were enrolled in charter schools, which means that one in five of LAUSD's students attended charter schools in 2013, a share of charter enrollment that is much higher than the state average (8%).

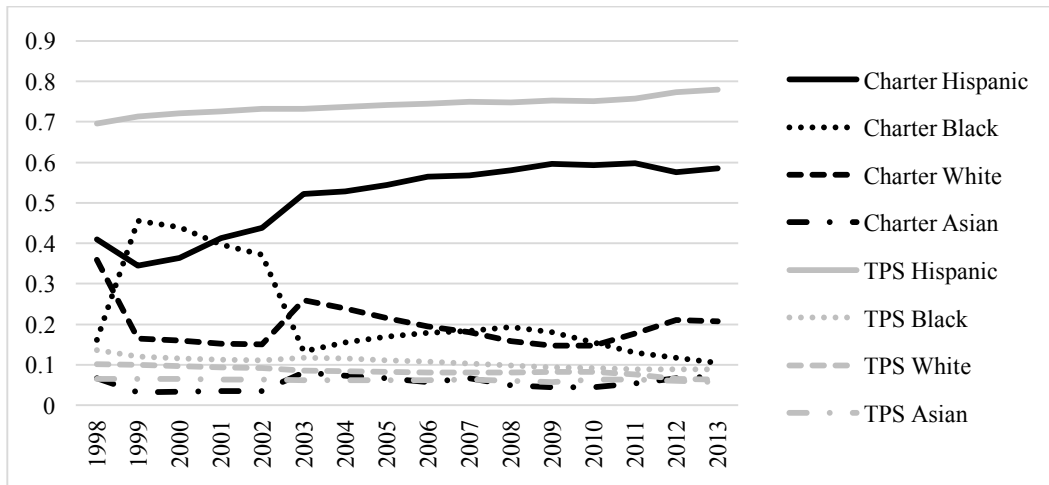
Table 3. Number of Schools and Students, LAUSD

	Charters			TPS			All Schools
	Schools	Enrollment	% of Total Enrollment	Schools	Enrollment	% of Total Enrollment	Enrollment
1998	15	11,131	1.6%	635	684,754	98.4%	695,885
1999	33	25,641	3.6%	622	684,366	96.4%	710,007
2000	36	26,338	3.7%	623	695,008	96.3%	721,346
2001	40	29,261	4.0%	623	705,797	96.0%	735,058
2002	49	30,969	4.1%	628	715,883	95.9%	746,852
2003	49	25,258	3.4%	644	721,751	96.6%	747,009
2004	68	30,205	4.1%	653	711,162	95.9%	741,367
2005	84	35,010	4.8%	684	692,309	95.2%	727,319
2006	128	40,822	5.8%	701	662,900	94.2%	703,722
2007	131	46,797	6.8%	700	638,452	93.2%	685,249
2008	156	57,904	8.5%	711	626,239	91.5%	684,143
2009	169	65,589	9.8%	711	601,726	90.2%	667,315
2010	192	77,758	11.7%	731	589,332	88.3%	667,090
2011	208	95,038	14.4%	742	564,094	85.6%	659,132
2012	254	118,599	18.2%	749	534,738	81.8%	653,337
2013	254	136,831	21.0%	735	513,789	79.0%	650,620

Source: National Center for Education Statistics, Common Core of Data.

In both charters and TPSs, Hispanic students comprise the largest segment of enrollment (Figure 7). However, charter schools enroll a disproportionately small share of Hispanic students (59% in 2013) and a disproportionately large share of white students (21% in 2013) compared to TPSs (78% Hispanic and 6% white).

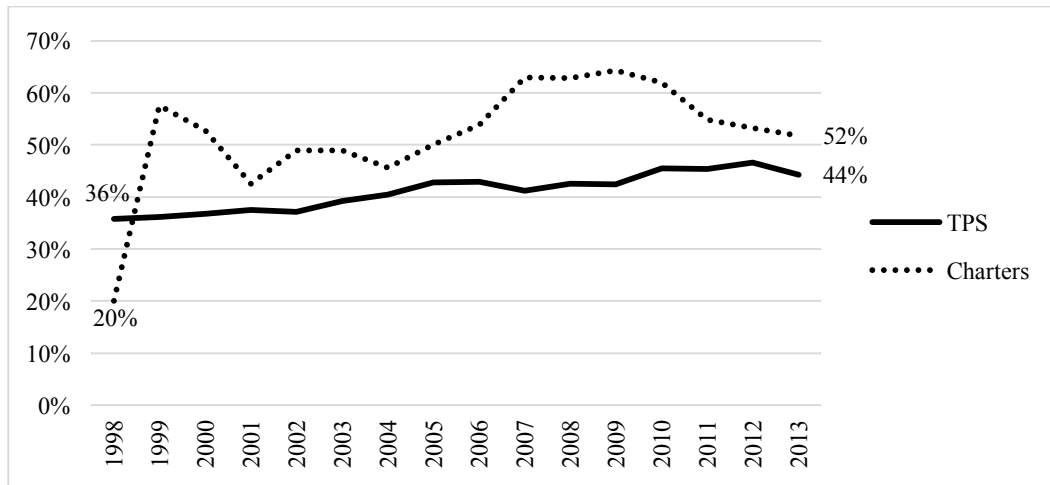
Figure 7. Enrollment by Race, Charters and TPSs, LAUSD



Source: National Center for Education Statistics, Common Core of Data.

Compared to TPSs, charters have a smaller share of intensely segregated minority schools (90-100% non-white), but a larger share of hypersegregated schools (99-100% non-white). In 2013, more than half of all charters (52%) and slightly less than half of TPSs (44%) were hypersegregated minority schools. The share of hypersegregated minority schools was increasing in charters through 2009 and has since been declining; a similar shift occurred a few years later, in 2012, in TPSs. These results reveal that although charter schools enroll a disproportionately small share of Hispanic students, they tend to concentrate students of color together in the same charter schools at very high levels, as is demonstrated by the larger share of hypersegregated charter schools.

Figure 8. Percent of 99-100% Non-White Schools, LAUSD



Source: National Center for Education Statistics, Common Core of Data.

Hispanic, black, and Asian students are exposed to a larger share of white students in charters than in TPSs, which is likely related to the disproportionately large share of white enrollment in charter schools. Of all racial groups, Hispanic students are exposed to the smallest share of white students in both charters (10% in 2013) and TPSs (4% in 2013). Asian students are exposed to the largest share of white students (37% in charters and 13% in TPSs).

The typical Hispanic student is more isolated with same-race peers in TPSs (84% in 2013) than in charters (77% in 2013). On the other hand, the typical white student and the typical black student are more isolated with same-race peers in charters. When considered together, the typical Hispanic and the typical black student are extremely isolated with other Hispanic and black students in both charters and TPSs, a form of isolation that has generally increased over time. In 2013, this isolation was slightly more extreme in TPSs. The typical black or Hispanic student in a charter school had 85% black and Hispanic peers. In a TPS, the typical black or Hispanic student had 91% black and Hispanic schoolmates.

LAUSD Enrollment and Segregation by Poverty

Charter schools in LAUSD enroll a disproportionately small share of low-income students. In 2013, more than three-fourths of students who attended TPSs (79%) were low

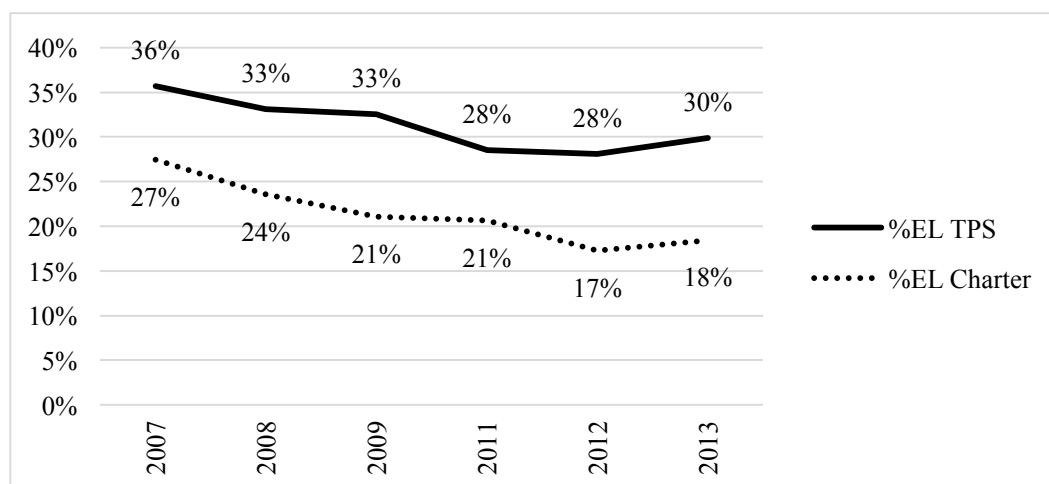
income while less than two-thirds of charter school students (62%) were low income. However, since 2005, a larger share of charters than TPSs has enrolled 90-100% low-income students, a pattern that is somewhat unexpected given the disproportionately small share of low-income students who attend charters. In 2013, more than one-third of charters (36%) and around one-fifth of TPSs (21%) enrolled a student body that was 90-100% low income. Similar to the state-level pattern, these results indicate that when charter schools do enroll low-income students, they tend to be concentrated together in the same charter schools.

LAUSD's students experience a double segregation by race and poverty in that the typical Hispanic and the typical black students are exposed to larger shares of low-income students than the typical white and the typical Asian students. In charter schools, there is a greater disparity in exposure to low-income students by poverty at most time points as well as a greater disparity in exposure to low-income students by race.

LAUSD Enrollment and Segregation by Language

The share of ELs enrolled in LAUSD has declined in both charters and TPSs (Figure 9). Charter schools enroll a disproportionately small share of ELs, and the disparity in EL enrollment between charters and TPSs is expanding. In 2013, charters enrolled a student body that was 18% EL while TPSs enrolled 30% ELs.

Figure 9. EL Enrollment, LAUSD



Source: California Department of Education, English Learners by Grade and Language.

In 2013, the majority of charter schools (56%) enrolled a student body that was between 0% and 20% ELs, and a smaller share of charters (11%) than TPSs (21%) enrolled a majority EL student body. In both charters and TPSs, ELs are isolated by language. In 2013, the typical EL in a charter had more than twice as large a share of EL schoolmates (34%) as the typical non-EL in a charter (15%). In TPSs, the typical EL had a larger share of EL peers (41%) than the typical non-EL (25%), but the gap between the two was smaller than in charters.

Not only are ELs segregated by language, they are also segregated by race. The typical EL is exposed to a smaller share of white students than the typical non-EL. The disparity in exposure to white students between ELs and non-ELs is greater in charter schools than in TPSs. In 2013, in charters, the typical EL had 9% white peers and the typical non-EL had 23% white peers; in TPSs, the typical EL had 3% white peers and the typical non-EL had 8% white peers.

In addition, ELs experience segregation by poverty, as the typical EL attends a school with a larger share of low-income students than the typical non-EL in both charters and TPSs. In 2013, ELs in TPSs had 83% low-income peers and in charter schools, 76%. The disparity in exposure to low-income students between ELs and non-ELs is larger in charters. Thus, ELs in LAUSD experience a triple segregation by race, poverty, and language, as they do statewide.

Discussion and Policy Implications

Segregation is intensifying in California's charters and TPSs, and charters tend to be more segregated than TPSs. While the disparities in enrollment and segregation between charters and TPSs are generally modest, charters tend to enroll disproportionately large shares of advantaged students and small shares of historically disadvantaged students. This study's findings generate policy implications in multiple areas, including diversity goals, transportation, information dissemination, enrollment policies, and housing, all of which contribute to varying levels of desegregation in charter schools (Ayscue, 2016).

In their initial petition for charter school status, petitioners are required to describe how the charter school will reflect the demographic composition of the community or district in which it is located. If charter schools are located in segregated communities, this requirement essentially ensures that the school will also be segregated. If application requirements required

that petitioners address how the charter school would enroll a diverse student body rather than one that is reflective of the community, it is possible that charter schools would strive for greater desegregation.

A policy requiring charter schools to set diversity goals could be effective in facilitating desegregation. Even when charter schools have established diversity goals—such as in LAUSD, which is still under a court-ordered desegregation plan—more rigorous standards and stronger oversight could encourage charters to intensify their efforts toward achieving those diversity goals. Additionally, the reauthorization process, which occurs every five years, provides an opportunity for authorizers to hold charter schools accountable for diversity outcomes.

California could encourage such efforts by including a measure of diversity or desegregation as part of the state accountability system under the Every Student Succeeds Act (ESSA) (Holme & Finnigan, 2016). ESSA requires that in addition to several measures of academic success, each state must include one non-academic indicator of school quality or success. If California included a measure of diversity or desegregation as an indicator of school success, it is likely that charter schools would create diversity goals and work toward meeting those goals in a more intentional and comprehensive fashion.

Providing free and accessible transportation could enhance desegregation in charter schools as it has in other schools of choice (Siegel-Hawley & Frankenberg, 2013). When families are responsible for transporting their own children, numerous barriers—including work obligations and the lack of a means of transportation—prevent students from attending schools outside of their immediate neighborhoods. These barriers disproportionately affect lower-income, less advantaged students and families.

For charter schools to enroll a diverse student body, a diverse group of students and families must possess knowledge about the school and its existence. Creating a central hub of information about charter school options could address this gap in information. It would be important to provide this information in multiple languages and to disseminate it widely across districts at locations that are frequented by families of diverse backgrounds as well as online.

In most cases, enrollment priorities are given to siblings, but lotteries are otherwise random. A weighted lottery that prioritizes diversity in racial, socioeconomic, and linguistic

enrollment could facilitate the creation of a more diverse student enrollment. In LAUSD in particular, the distinction between affiliated and independent charter schools is important because affiliated charters must first enroll students within the school's attendance zone before conducting a lottery. Any policy that dictates an attendance zone of the neighborhood surrounding a school is likely to result in segregation due to residential segregation. Enrollment policies that do not dictate an attendance zone, but instead create a weighted lottery, could be more effective in supporting desegregation efforts.

Finally, schools and neighborhoods are interrelated, particularly when transportation is not provided, making it even more difficult to create a desegregated school in a segregated neighborhood. Although not restricted by catchment areas, charters often do not draw students from larger geographic areas due to concerns with traffic and transportation, especially in large cities such as Los Angeles. Thus, housing policy that supports the development of mixed-income neighborhoods likely also would contribute to a school's ability to facilitate desegregation.

Moving Toward Desegregation

While the above policies and practices could facilitate greater desegregation in charter schools, it is important to recognize that charter schools are not necessarily the most effective vehicle for creating desegregated schools. It is likely that in some cases, charters are being used intentionally to serve communities of color with high concentrations of poverty, and in other cases, charter schools are being used for white flight from TPSs. Thus, policies as well as federal and philanthropic investments that have contributed to the rapid expansion of the charter school sector have often been harmful to the goal of creating more diverse schools. Reinvesting in the traditional public school system or school choice systems with civil rights protections, such as magnet schools, could offer promise for creating more desegregated schools in the future.

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CHAPTER 6

The Trash-Talking Candidate Who Wasn't Supposed to Win

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The candidate was disliked by the leadership of his party when he entered the race. Over his lifetime, he had held disparate and inconsistent views on issues of the day, so what he would do if he got into office was unclear. Establishment figures and the major newspapers were appalled with the prospects that he might win, but were convinced that he wouldn't once all the facts about him were unmasked. As a personality, the candidate was very self-confident and derided the opposition. He made aggressive charges against his opponent during the campaign and even threatened lawsuits against the opposition. He apologized for nothing. A biography noted:

"He goes straight for a jugular vein. He says outrageous things about his opponents and their allies, generally depicting them as losers, radicals, bunglers, trouble makers, or even outright dangers to the country."¹

No, we are not referring to the 2016 presidential election, nor to Donald Trump. Instead, the reference is to the year 1961 and to the Los Angeles City mayoral election of that year. The candidate was Sam Yorty, a registered Democrat at the time who had nonetheless had supported Republican Richard Nixon in the 1960 presidential election against Democrat John F. Kennedy. Kennedy, in Yorty's view "was just kind of a pretty boy" whose wealthy father had bought him the nomination.² In Yorty's view, supporting Nixon just proved he was an independent thinker who put little weight on party loyalty.

Yorty won the 1961 Los Angeles mayoral election, unseating incumbent mayor Norris Poulson. It wasn't supposed to happen. Poulson had the support of the downtown LA establishment – and especially of the *Los Angeles Times* – which, at the time, tended to dominate municipal politics. But Yorty took advantage of the latest electronic medium of that era – television and free time on TV that he could obtain by being newsworthy and making charges. Poulson assumed traditional newspapers would carry the day for his re-election. And by constantly making serious charges against Poulson, Yorty forced his way into the news, even into the pages of the reluctant *LA Times*. He couldn't be ignored.

Of course, any comparisons can be pushed too far. Trump was an outsider in the sense that he was a businessman and reality TV figure who had never run for political office. In contrast, Yorty – although he was not in elected office at the time of the 1961 mayoral race – had been a local politician for many years. He had served in the state assembly and in Congress. And he had often run for office and failed. Indeed, the biography of Yorty from which the italicized quote above came is subtitled, "Politics of a Constant Candidate."³ Yorty – in contrast to Donald Trump – was knowledgeable about the workings of government and was familiar with the local political figures and institutions of the day when he ran for mayor in 1961.

In fact, there are two biographies of Yorty. One, to which we referred above, is a more scholarly treatment co-written in 1973 by a UCLA professor of political science, when Yorty was still in office (in his third term as mayor).⁴ It's reasonable to assume that part of the motivation behind the book was that Yorty might achieve higher office. By that time, Yorty had unsuccessfully run for the U.S. Senate, the

¹John C. Bollens and Grant B. Geyer, *Yorty: Politics of a Constant Candidate* (Palisades Publishers: 1973), p. 213.

²Samuel Yorty, "Ask the Mayor Oral History Transcript," UCLA Oral History Program, 1987, p. 100. Referenced as "Yorty Oral History" in later footnotes.

³Bollens and Geyer.

⁴John C. Bollens was a long-time faculty member with expertise in local politics. The Bollens-Ries-Hoffenberg lecture series at UCLA continues to carry his name. <http://www.brh.ucla.edu/>.

governorship, and even for president. If he had won in 1961 when he wasn't supposed to win, perhaps he might do it again.

The other biography is something of a puff piece, written in 1966 by Ed Ainsworth, a reporter for the *Los Angeles Times*. Ainsworth among other topics, had been assigned by the *Times* in the 1940s to be the point man in the newspaper's successful campaign to establish a countywide air pollution control authority.⁵ It may seem strange that an *LA Times* reporter would write an admiring biography of a man who his newspaper had bitterly opposed in 1961. But by the 1965 mayoral election in which Yorty won a second term, the *Times* had come around and endorsed him. So it's not surprising that a *Times* reporter would write a flattering biography at that point.

Yorty, as a mayor in his first term, had made peace with the *Times*. He did so partly by supporting the efforts of Dorothy Chandler – of the Chandler family that owned the paper – to develop the downtown Music Center. And with the 1966 gubernatorial election looming, Yorty – if he ran against incumbent Democrat Pat Brown – might make good use of a flattering biography. Unlike Donald Trump, Yorty had no permanent grudge against the news media in the abstract. Why not win them over if you could?

So who was Sam Yorty? How did he win the race for mayor in 1961? What lessons might be drawn from that long-ago contest? We'll address that issue at the end of this chapter.

What's Remembered of Sam Yorty?

Mayors of the City of Los Angeles are generally not well remembered. Although there is often speculation that a sitting LA mayor will achieve some higher office, so far none has succeeded becoming a statewide or national figure. Back in 1961, Los Angeles was, if anything, seen as a backwater by the elites of the country (and certainly of the Bay Area). LA was notable mainly for Hollywood (much of which is not within the City boundaries) and the freeways that were operating or being built – but not for high culture. Ordinary folk, however, were more impressed and new people were constantly arriving to the City.

The City's chief newspaper, the *Los Angeles Times*, was not viewed as a major national paper until the late 1960s. Instead, the *Times* was seen as a vehicle for local business boosterism and for the promotion of Republican candidates. LA's smog did get national attention – but that was not a plus for the City. As for educational institutions, UCLA was up and coming, but still emerging from being the southern branch of the University of California (Berkeley). USC was noted for football. And Caltech, which was prominent in science and engineering, was not in LA, but in Pasadena.

So viewed from the east, Los Angeles was at best a work in progress. It had a population of about 2.5 million at the time of the 1961 election, the nation's third largest city. New York had 7.8 million; Chicago had 3.6 million. But Los Angeles was rapidly growing along with the southern California region and the state. And many of the new arrivals to the City were settling in the San Fernando Valley, a one-time rural area until after World War II, and not in the downtown area. Despite the best efforts of the downtown elite, the City was decentralizing, aided by the developing freeway system.

⁵Ed Ainsworth, *Maverick Mayor: A Biography of Sam Yorty, Mayor of Los Angeles* (Doubleday & Co.: 1965); Daniel J.B. Mitchell, "Clearing the Air: What the Times Called for in 1947" in Daniel J.B. Mitchell, ed., *California Policy Options 2016* (UCLA Luskin School of Public Affairs, 2016), pp. 5-24.

To the extent that Yorty has any name recognition today, it is as the guy who was defeated by city councilman Tom Bradley – LA’s first and only black mayor – in 1973, after the incumbent Yorty ran a particularly nasty, and many would say – racist – campaign against Bradley.⁶ In fact, the 1973 contest was a repeat of Bradley versus Yorty in 1969, which Bradley lost.

Yorty in both campaigns essentially linked Bradley – a former policeman – to black radicals at a time when the Watts Riot of 1965 was still a fresh memory of the city electorate.⁷ Bradley, once elected as mayor, went on to serve for four terms (20 years) and died in 1998. The international terminal at Los Angeles airport is named in his honor.

Yorty in contrast, who also died in 1998, has no such monument. Bradley, when he died, lay in the LA Convention Center for public viewing before burial, a project constructed during Yorty’s mayoralty and pushed by the mayor, but not named after him.⁸ Similarly, visitors to the Los Angeles Zoo likely don’t know it was a creation of the Yorty years. And, of course, the buildings of the above-mentioned LA Music Center are named after fundraiser Dorothy Chandler and after big donors.

So Who Was Sam Yorty?

Like many Los Angeles residents, Samuel William Yorty was from somewhere else, in his case, Lincoln, Nebraska, where he was born in 1909. Nebraska was a source of populist politics. Yorty’s father was an admirer of William Jennings Bryan whose free silver movement captured the Democratic Party in 1896. Bryan was a three-time Democratic nominee for president: 1896, 1900, and 1908. And he was Secretary of State under Woodrow Wilson. Inspired by Bryan and Wilson, Yorty decided early on that politics would be his goal in life as a career.

What emerges from Yorty’s biographical portrait is an ambitious fellow who could easily make friends and who was very self-confident. When he came to LA, he held various private-sector jobs, ultimately became a lawyer, and early on got into politics, his goal. In Los Angeles during the 1930s, he became involved in Technocracy, a movement of that period that saw putting scientists and engineers in charge of the economy as a way of escaping the Great Depression.

Technocracy’s fascination with technology in a sense is akin to today’s beliefs that “technology” will solve human problems. In a sense, it can be seen as a continuation of late 19th and early 20th century belief in applying “science” to human endeavors such as managing firms (“scientific management”), setting tariffs (the “scientific” tariff), and more generally to fields such as urban planning and criminology. But in the 1930s, Technocracy also resonated with New Deal ideas about “economic planning” and the idea that remains prominent in California “progressivism” that experts, and not potentially corrupt politicians and political parties, should be in charge.

⁶TV coverage from the 1973 campaign can be seen at <https://www.youtube.com/watch?v=Val48Xn8UrY>.

⁷TV coverage from the 1969 campaign can be seen at <https://www.youtube.com/watch?v=tnDjQ1QbWho>.

⁸Yorty’s name lives on mainly in a blog on local Los Angeles politics named after him that dates back to 2004: Mayor Sam’s Sister City: <http://mayorsam.blogspot.com/>. The Mayor Sam blog, likely without permission or blessing from Yorty’s heirs, posts local political gossip. See Steve Hyman, “Mayor Sam City Hall Blog Unmasked,” *Los Angeles Times*, September 2, 2005. Available at <http://articles.latimes.com/2005/sep/02/local/me-mayorsam2>. The blog has continued – and now tends to tilt conservative – despite the death of its creator, Michael Higby, in 2015. See Brenda Gazzar, “Political blogger Michael ‘Mayor Sam’ Higby remembered for his influence, wit,” *Los Angeles Daily News*, April 19, 2015. Available at <http://www.dailynews.com/obituaries/20150419/political-blogger-michael-mayor-sam-higby-remembered-for-his-influence-wit>.

On the other hand, Yorty seemed to be selective in what remedies for the Depression he would follow. He did not support the leftist EPIC (End Poverty in California) 1934 gubernatorial campaign of author Upton Sinclair. Sinclair touted “production for use” rather than “production for profit” and wanted to redevelop the state’s economy through cooperatives financed by a vague monetary mechanism. Yorty apparently sympathized with establishment Democrats who resented Sinclair’s capture of their party’s nomination. They ended up supporting the incumbent Republican gubernatorial candidate or staying home.⁹

In any case, in 1936, the year that Franklin D. Roosevelt was running for re-election as President, Yorty ran for the state assembly from a district in LA as a Democrat. FDR’s popularity helped down-ticket Democrats, including Yorty, who won the seat although the district had been Republican before. His campaign was basically a shoe-string, door-to-door operation. One thing that Yorty had been advised was that given limited resources, the doors to be knocked on should be those of homeowners rather than apartment dwellers. The latter were seen as unlikely to bother to vote. The idea of focusing on yeoman homeowners and their concerns played an important part in Yorty’s appeal in his later mayoral campaigns.

In the state assembly, Yorty started out on the left – and would in later campaigns sometime be tarred as “communist” due to his affiliations from that time. But in fact he was ideologically fluid and ended up teaming with another assemblyman – Jack Tenney – whose legislative committee focused on investigating and rooting out alleged communists in state government.¹⁰ Later, however, he and Tenney had a falling out. In any case, Yorty’s left-right political career (which included unsuccessful runs for a seat on the LA City Council and for the U.S. Senate), went on hiatus when he lost the race, or withdrew from the race, for his seat in 1942. He entered the Army Air Forces during World War II.¹¹

During the war, Yorty served in various administrative roles in Hawaii, Australia, New Guinea, and the Philippines. After discharge from the service, he ran for mayor of LA in 1945, and lost. But he won a new seat in the state assembly in 1949, and then won a Congressional seat in 1950, serving two terms. In Congress, he made a name for himself pushing for the right of California to control access to its offshore oil deposits and for protections for California’s allotment of Colorado River water. These statewide and regional issues kept Yorty’s name in the news. But a 1954 run for the U.S. Senate was unsuccessful as was another in 1956. Yorty tended to be out of sync with the liberal/left side of the Democratic Party during this era and beyond.

In short, by the time of the 1961 mayoral contest, Yorty was certainly a known local political personality, but a bit of a has-been. Because he had been out of office when his second term in Congress ended, he was not front-and-center in the news. Establishment Democrats were not enthused about him,

⁹Yorty was interviewed in the 1980s for a documentary on the Great Depression and the EPIC campaign. Outtakes from that interview can be seen at <https://www.youtube.com/watch?v=RbrX6ml2lo>.

¹⁰Tenney later moved to the state senate, switched to the Republican Party, and became increasingly anti-Semitic in later years, writing a series of anti-Semitic tracts. He was peripherally involved in the loyalty oath controversy at the University of California. Yorty in an interview in the 1980s said he thought Tenney “really went crazy” and claimed no contact with him in Tenney’s later years. “Oral History,” p. 80.

¹¹Bollens and Geyer (p. 237) report that Yorty won the primary but lost the seat in the general election. Yorty’s version in the later Oral History (p. 64) is that he withdrew to join the military. Both could be true, since his name would have remained on the general election ballot even if he withdrew. What later became the separate Air Force was part of the Army during World War II.

particularly with his backing of Nixon over Kennedy in the 1960 presidential election. Yorty had developed a private law practice by that time, although he was searching for a way back into the political world. The 1961 mayoral election was to be Yorty's path back into the headlines and into elected office.

The Office of Mayor in LA

The power of the mayor of Los Angeles at the time of the 1961 election was limited compared to what was typically found in other big cities, especially in the east and Midwest. This power vacuum is filled in large part by the members of the city council and the fact that key City functions are controlled by other elected officials such as the city attorney.

These limits on the mayor are a reflection of California progressivism. Races for mayor and city council are nonpartisan. Candidates essentially run on their own; there is no well-oiled party "machine" to determine nominees. Members of both parties, and independents, all run for office in one primary. If no one receives 50%-plus-1, the top two run against each other in the general election.¹² Absent a strong local political party, however, even if the winner and a majority of the city council are of the same party, each elected official is an independent operator. The council feels little or no obligation to the mayor.

In addition, many municipal functions are not handled by the City. Schools are run by a school district that extends beyond LA's borders. Many health and welfare functions are handled by the County. And exactly what powers the mayor does have are conditioned by the weight of history. A corruption and police scandal in 1938, which even involved a car bombing, led to the recall of then-Mayor Frank Shaw. He was replaced by a reform candidate, Fletcher Bowron, a former judge. But the upshot of these events was a situation in which the mayor had little direct control of the Police Department.¹³

Absent party machinery, a downtown LA elite – especially whoever in the Chandler family was running their *Los Angeles Times* at the time – had considerable influence in who got to be mayor. The *Times* was not especially enthusiastic about the reformist Bowron, who was too liberal for its tastes, particularly with regard to his support for a public housing project in Chavez Ravine. In significant part due to the opposition of the *Times*, Bowron lost a bid for re-election in 1953, and was replaced by Norris Poulson, a Republican more to the *Times'* conservative bent.

Poulson, like Yorty, had been in both the state assembly and Congress. His most memorable achievement as mayor was bringing the Dodgers from Brooklyn to LA, although a much of the credit for that importation was due to the efforts of Rosalind (Roz) Wyman, the first woman on the city council. Poulson was a relatively staid fellow who, in keeping with the preferences of the *Times*, focused on infrastructure such as the airport and taking care of business. As he neared the end of his second term in 1961 at age 65, he leaned towards retiring. But he was finally persuaded by the powers-that-be, undoubtedly to his after-the-fact regret, to run for re-election to a third term.

¹²A similar nonpartisan "top-2" primary system now characterizes all state elections (legislature, statewide officials) thanks to a 2010 voter-approved proposition (Prop 14).

¹³One result of the recall of Shaw was an attempt by new Mayor Bowron to remove Shaw-linked city councilmen in the 1939 elections. Yorty ran for a council seat but lost.

Trash

Although Poulson was a reluctant candidate, Sam Yorty was anything but reluctant. In a later oral history, he attributed his decision to run to persuasion by a black attorney acquaintance he just happened to run into.¹⁴ That story is implausible. We know he had a life goal of politics. Surely, he was aware of the upcoming 1961 election and had been thinking about it. But the black attorney story – which also appears in his two biographies, was helpful to his image.

The first biography was written after the Watts Riot and could be seen as showing he had black support. The second biography was written after his 1969 campaign in which he beat Tom Bradley in a racially-charged campaign. And the oral history interview with Yorty took place in the 1980s when he was largely remembered for his losing campaign against Bradley.

Still, even if we assume Yorty was not a reluctant candidate, it can be hard to beat an incumbent when things seem to be OK in municipal affairs. Most voters – then as now – pay little attention to local politics, and – in fact – they often don't vote at all in municipal contests. So if he was going to run, Yorty was going to need a newsworthy overall theme. That theme became condemnation of the downtown LA elite who ran things for their own benefit and ignored the concerns of ordinary folks, particularly those in the rapidly-growing San Fernando Valley.

The question was whether there was enough dissatisfaction with Poulson and City Hall among voters to make a Yorty candidacy worthwhile. Yorty commissioned a poll and found that although Poulson had more support than he did, voters didn't give majority support to any of the names then being thrown around as potential mayoral candidates.¹⁵ Apparently, there was enough voter dissatisfaction with the current regime at least to make a run for mayor a plausible endeavor.

But amorphous dissatisfaction is not enough. Voters would have to hear that a Mayor Yorty would – in the words of a much more recent candidate – “drain the swamp.” And they would have to be persuaded that even though they might not be enthusiastic about City Hall, it was a swamp.

The *LA Times* was willing to give Yorty publicity when he favored Nixon over Kennedy.¹⁶ But the *Times* was not going to promote his message in a positive sense in the upcoming mayoral campaign. Incumbent Mayor Poulson was fine with the *Times*. Moreover, for the Yorty theme to gain traction, there had to be concrete illustrations of how an out-of-touch, elitist, and even corrupt City Hall was ignoring the interests of voters. One illustration that Yorty hit on was trash.

The City was in charge of collecting trash and for disposing of it. For years, homeowners burned their trash in backyard incinerators. However, as concerns about smog mounted, the practice was banned countywide in 1954. That ban was controversial. Some homeowners regarded the right to burn your own trash as akin to the right to bear arms as seen by gun enthusiasts. As a result, municipal rubbish collection was more of an issue than you might expect. In any event, more trash to be picked up had costs. And to defray some of the cost, the City had a recycling program.

¹⁴Oral History, p. 94.

¹⁵Bollens and Geyer, p. 117; Ainsworth, p. 129.

¹⁶“Yorty Supports Nixon and Details Reasons,” *Los Angeles Times*, October 25, 1960, p. 4.

Nowadays, we tend to think of recycling as an environmental issue. But in 1961, apart from smog concerns, environmentalism was in its infancy. The LA recycling program was in place because tin cans could be sold as scrap and thus were revenue to the City. To make trash collection easier (for it!), the City ran a three-day program. Garbage (discarded food waste, etc.) was collected one day. Combustible rubbish – the type that was once burned in backyards – was picked up another day. And cans were collected on a third. As Yorty depicted the situation, convenience and cash for City Hall was leading to drudgery and dirty work for the trash-separating housewife. If elected, he would end this sorry state of affairs with one-day pick up and no messy separation.

The Primary Campaign

As noted, Yorty did take a poll before deciding to enter the race. But local election polling is difficult in part because voters don't usually pay much attention to local affairs and often don't have strong opinions. Low turnout is another characteristic of local elections, and it's hard to know who will turn out and in what numbers. So judgments in local politics are often based on gut feelings.

The Downtown View

Now put yourself in the place of those downtown elitists at the *LA Times* and elsewhere. They likely wouldn't see anything wrong with their control of local affairs; it was rather the natural order of things. And they certainly wouldn't be impressed with trash as an issue. Their servants likely dealt with the trash.

In addition, Yorty had been out of office for several years. Poulson was the incumbent mayor and from the downtown elite's perspective, he was doing a good job. Moreover, when he ran for his second term four years before, he was elected in the primary. No general election was even required. Everybody they knew said Poulson was a shoo-in. So what could possibly go wrong? And who could be against good Mayor Poulson? Finally, the *Times* was prepared to play its role in the Poulson campaign, and all the right people read the paper.

Challengers

The first step in the 1961 election process was filing to run during January 9-28 for the nonpartisan primary to be held April 4. Although a host of non-serious candidates eventually filed, apart from Poulson and Yorty, the only other significant entrant was a Republican city councilman named Patrick McGee from the San Fernando Valley area.

McGee was noted for attempting to retain a seat in the state assembly while serving on the city council, but he was eventually forced to give up the former. Despite that odd history, McGee was likely viewed by the *Times* as the more serious challenger because he was still in office on the city council and had been attacking the mayor on smog, traffic, and other issues in advance of the filing date. As for Yorty, the *Times* noted that he had run previously for mayor in 1945 and had come in only in sixth place. The *Times* also noted that Bart Lytton, a prominent savings and loan executive and "a strong influence in Democratic Party affairs," had filed his name as a protest against the lack of any "important, active Democrat" in the contest.¹⁷ Assuming Lytton knew when he filed that Yorty, still a registered Democrat

¹⁷Carlton Williams, "14 Entered in L.A. Race for Mayor," *Los Angeles Times*, January 10, 1961, p. 1.

despite his support of Nixon over Kennedy, was running, his protest could be seen as aimed at Yorty, the party apostate.

Attack and Response

Although establishment Democrats were not keen on Yorty, he was the only significant registered Democrat in the campaign for mayor of Los Angeles (which he pronounced Law SANG-lus). And Yorty came out swinging:

"There is in Los Angeles today a public mandate for vigorous new programs to meet the needs of a growing city. Poulson's pathetic pretense has brought stagnation, has stunted our civic growth and weakened the financial structure of the city. He has brought Los Angeles to the brink of financial instability by a reactionary, do-nothing, administration."

"We have more taxes, more traffic congestion, more smog, more dope problems, more bus fares, more crime, more government costs, more wasteful expenditures and false promises and more stagnant local government than at any time in our history."

Poulson responded that he would take the high road – always a risky strategy in the face of an aggressive opponent – and not engage in “mudslinging or cheap political dogfights.”¹⁸ Yorty challenged Poulson to debate and, when he wouldn’t, charged him with hiding behind “a wall of secrecy” and a “high-powered propaganda machine...with his own stooges throwing innocuous, leading questions at him.”¹⁹ Despite these attacks, the *Times* assured readers towards the end of January that “it is considered highly likely by many that one candidate in the mayoral race may get more votes than all of his opponents combined and thus be elected in the primary.”²⁰ The *Times* did not explicitly say that the “one candidate” would be Poulson, but that outcome seemed to be implied.

Throat and Mud

Apart from not wanting to engage in “mudslinging” debates, Poulson had another reason for refraining, a bad case of laryngitis. The *Times* reported that “throat specialists” had counseled him to stop talking. Yorty, however, was taking no excuses and said he would form a “truth squad” that would follow the mayor around and “refute (his) one sided, canned propaganda.”²¹

By this time, the mayor was beginning to take the Yorty challenge more seriously. The chair of Poulson’s re-election committee announced that the mayor would have a “facts brigade” to counter his opponent’s “truth squad.”²² Part of the motivation for the “brigades” was to provide alternative speakers for the voice-challenged mayor. But there was to be no sympathy from Yorty:

¹⁸ Carlton Williams, “Yorty Files, Raps Record of Poulson,” *Los Angeles Times*, January 19, 1961, p. B1.

¹⁹ Carlton Williams, “Poulson and Arnebergh Attacked as City Campaign Gains Impetus,” *Los Angeles Times*, January 24, 1961, p. B1.

²⁰ Carlton Williams, “92 Qualify in City for Election Race,” *Los Angeles Times*, January 29, 1961, p. H2,

²¹ Carlton Williams, “One Poulson Rival Fails to Qualify,” *Los Angeles Times*, February 2, 1961, p. B1.

²² Carlton Williams, “‘Facts Brigade’ Countered by ‘Truth Squad,’” *Los Angeles Times*, February 3, 1961, p. 20.

*"(Poulson) claims serious chronic laryngitis when asked to face the voters or other candidates in open meetings, but gives wide publicity to his alleged speeches at closed meetings where his record cannot be questioned."*²³

Later, as the primary approached, rumors were circulated that Poulson had throat cancer, or a stroke, or a heart attack. Who exactly had first started what today would be termed "fake news" reports about Poulson's health was thought to be McGee, but Yorty was happy to use them.²⁴

Promises

Yorty also made various promises. He would raise police salaries with the cost to be financed by cutting "frills" from other departments. He would form a citizens' committee to mediate labor disputes. Another new committee would help senior citizens. Taxes would be reformed. City government would be reorganized. Despite his prior disdain for now-President John Kennedy, Yorty would have open press conferences styled after Kennedy's. All of this innovation would be in contrast to the Poulson administration which "has hidden the true facts from the people."²⁵

Oil and Rubbish

By the time of these announcements, the campaign was a month old and Poulson's "facts brigade" seemed just to be getting organized.²⁶ Moreover, there was about a month to go before the primary and unanswered charges by Yorty were accumulating. By mid-March, Yorty was suggesting the oil leases in Los Angeles Harbor were potentially suspect, and asking the state attorney general to investigate.²⁷ And his issue of trash collection was inserted into the campaign. Poulson complained that Yorty's charges were "out of step with our American tradition of fair play."²⁸ Meanwhile, McGee, the third significant candidate in the race, was hardly mentioned in contemporary news accounts; his starting advantage of being a current city councilman was being eroded by Yorty's ability to command public attention.

The Cost of Disloyalty

As the primary election approached, the Democratic establishment began to strike back at Yorty with endorsements of Poulson. Assemblyman Jesse Unruh, who would soon become speaker of the state assembly, supported Poulson. Paul Ziffren, an influential player in Democratic politics, was another Poulson supporter. Yorty, however, depicted these opponents as part of a machine that was taking over the Democratic Party.²⁹ But Democratic state senator Richard Richards denounced Yorty shortly before the primary:

"Democrats should not be misled nor deceived by party labels in the mayoralty election. For example, Sam Yorty claims to be a Democrat. However, Democrats should remember

²³Carlton Williams, "Double Charter Reform Urged by Candidate," *Los Angeles Times*, March 8, 1961, p. B1.

²⁴Carlton Williams, "Poulson Accuses Foes of Stirring Up Rumors," *Los Angeles Times*, April 1, 1961, p. 3.

²⁵Carlton Williams, "Additional Police Pay Raise Favored by Yorty," *Los Angeles Times*, February 10, 1961, p. C12.

²⁶Carlton Williams, "Attorney Callister to Head 'Facts Brigade' – Speakers for Poulson," *Los Angeles Times*, March 5, 1961, p. E1.

²⁷Carlton Williams, "Yorty Wants State to Investigate Oil Leases," *Los Angeles Times*, March 17, 1961, p. B6.

²⁸Carlton Williams, "Tempo of Mayor Race Steps Up; Poulson, Yorty in Hot Exchange," *Los Angeles Times*, March 24, 1961, p. 22.

²⁹"Richards Barb Draws Fire from Yorty," *Los Angeles Times*, April 1, 1961, p. 3; Carlton Williams, "Nonpartisan Support for Poulson Increases," *Los Angeles Times*, March 29, 1961, p. B1,

*that he has a disloyal record within the party. He has attacked our Democratic leaders and our Democratic organizations. He is not a responsible Democrat and should be disregarded and avoided by members of the Democratic Party.*³⁰

The Result

How would the voters digest what had occurred in the primary campaign? Would they go with the incumbent mayor who seemed to be supported by the establishments of both political parties? Or would Yorty's continual charges against the *status quo* candidate attract them?

Would they be attracted to a candidate who seemed to enjoy irritating the powers-that-be? The *LA Times* made no secret of its choice, printing a sample ballot on its front page with its desired candidates for the various offices and ballot issues marked with an X. Voters were advised that they could clip the front page sample ballot and take it into the voting booth for reference.

The primary attracted some national attention. The *New York Times*, on the eve of the election – and presumably relying on what the LA establishment thought they knew – reported that Poulson was favored and that his chief opponent was McGee. Yorty was mentioned as a third candidate in the race who had criticized oil leases. But the oil lease issue didn't catch on, according to the paper with the implication that Yorty would be knocked out of the race.³¹

It didn't quite work out that way. In the final tally, Poulson received 39.8%, Yorty came in second with 27.3%. McGee finished with 25.5% and the rest of the vote went to minor candidates.³² Turnout was about 41% of registered voters. As a result, there would be a general election on May 31 and the race would be between Poulson and Yorty. McGee said after the election that he should have campaigned harder, but he initially declined to endorse either of the finalists.³³

The General Election

The primary result shook up both the local establishment and Poulson himself. Sticking to the high road in the face of Yorty's allegations had not produced the desired result. So Poulson charged that if Yorty were elected, he would be dominated by an "underworld machine" and would appoint a new police commission that would "open the town up" to corruption and vice.³⁴ In short, Poulson would from that point on be an aggressive candidate. The problem was that when it came to what Poulson called mudslinging, he was not especially good at it. Apparently, even for slinging mud, there is a skill that some have, and others don't.

Why a Protest?

For the *LA Times*, the primary election was a shock. In an editorial a couple of days later, the *Times* just couldn't understand the results. The paper acknowledged that the fact that Poulson didn't receive a majority (which would have ended the contest without need for a general election) could have been due to a protest vote. But, the editorial lamented, "Protest against what. Poulson is a superior mayor."

³⁰Carlton Williams, "Poulson Accuses Foes of Stirring Up Rumors," *Los Angeles Times*, April 1, 1961, p. 3.

³¹"Poulson Favored in Coast Election," *New York Times*, April 2, 1961, p. 43.

³²Bollens and Geyer, p. 120.

³³"Going Fishing, Says McGee of Election Loss," *Los Angeles Times*, April 6, 1961, p. 32.

³⁴Carlton Williams, "Fiery Battle Shapes Up for Mayor," *Los Angeles Times*, April 6, 1961, p. 1.

The *Times* suggested that Poulson needed to be a harder campaigner. Poulson, it said, should “vigorously (make) the obvious more obvious.” (The obvious, of course, was that he was the one and only worthy candidate in the race.) The *Times* singled out the San Fernando Valley as an area particularly in need of being informed of that self-evident fact. “The chief business now is to get Mayor Poulson re-elected. ‘Now’ is the right adverb.”³⁵

Unfortunately for Poulson and the *Times*, “now” was not an option. Two days later, the paper reported that Poulson was resting in Palm Springs with his laryngitis and was under doctor’s orders not to talk for 48 hours.³⁶ Poulson’s harder campaigning would have to be delayed. Others would have to be proxies for the incumbent mayor.

Lawsuit, Trash, and Smear

Yorty, however, was under no restriction when it came to talking or campaigning. He filed a \$2.2 million lawsuit against Poulson charging the mayor with slander due to his “underworld” allegations. Poulson declined Yorty’s invitation to attend the press conference – held at City Hall – at which the slander suit was announced. He instead sent word from his Palm Springs recuperation site calling the lawsuit and press conference a “cheap political matinee.”³⁷ The location of the press conference, arguably right where the mayor should have been rather than in Palm Springs, itself pointed to Poulson’s absence from the City. It tended to raise the larger health issue regarding the mayor.

Beyond the lawsuit, the trash issue – which had already been raised – was brought back to public attention by Yorty. The City had hired a consulting firm that recommended a fee payable by property owners for trash collection. Yorty charged that the mayor had known in advance of the recommendation and thus had deceived homeowners in not disclosing the potential fee earlier. Moreover, he charged that downtown commercial interests would be exempt from the fee and characterized the consulting report as “phony.”

Yorty also charged that he was a victim of a “big lie” and “big smear” campaign by Poulson whose campaign, he said, had been saying that he (Yorty) had communist sympathies. He charged that he was the victim of “news blackouts” by the Poulson campaign and “machine,” likely a complaint that the *Los Angeles Times* was not giving him adequate coverage. The mayor was also charged with offering a salary increase to the police without specifying a tax to pay for it. (Recall that Yorty had also proposed a police raise to be paid for by cutting “frills” from elsewhere).³⁸

Health and Recuperation

Meanwhile, as Yorty made his charges, the peace and quiet Poulson had sought in Palm Springs ended up lasting two weeks. Poulson declared on returning to LA that he was not going to conduct a “namby-pamby” campaign. However, his return to work initially included time in Sacramento and Washington, DC, while Yorty stayed in LA making news.³⁹ Poulson indicated he would not personally campaign until

³⁵ Editorial: “Post-mortem and a New Fight,” *Los Angeles Times*, April 6, 1961, p. B4.

³⁶ “Mayor Takes Rest Before Campaign,” *Los Angeles Times*, April 8, 1961, p. B3.

³⁷ “Yorty Files \$2 Million Action Against Poulson,” *Los Angeles Times*, April 11, 1961, p. B1.

³⁸ Carlton Williams, “Yorty Calls \$85,000 Trash Survey ‘Phony,’” *Los Angeles Times*, April 18, 1961, p. 26.

³⁹ “Poulson Set to Begin Ballot Drive,” *Los Angeles Times*, April 20, 1961, p. B3.

May 10, twenty-one days before the general election, a decision to abstain of which Yorty said he was “unimpressed.”⁴⁰

The *Times*, which had limited its campaign coverage until Poulson was back on the job, picked up the pace of reporting with ostensibly neutral profiles of the two candidates. Its profile of Poulson aimed at addressing the age/health issue with the headline “Poulson, 65, Still Seeks Hard Work.” It emphasized that low turnout in the primary may have contributed to Poulson’s failure to obtain an absolute majority. Voters who were satisfied with the mayor’s governance didn’t bother to turn out, presumably assuming he would win without them.⁴¹ The profile for Yorty, in contrast, pointed to election contests he had previously lost, the fact that he had been disloyal to Democrats by endorsing Nixon in 1960, and that as an assemblyman, Yorty had once favored a bill that would have legalized gambling. “His platform contains the promise of every political ‘out,’ more services for less money,” declared the Yorty profile.⁴²

Police and Parker

While Poulson was in Sacramento meeting with Democratic governor Pat Brown, Yorty characterized the governor as anti-police. He speculated that Poulson was making a secret deal with Brown that would hurt the Police Department. Yorty cited a campaign contribution made in 1953 to the Poulson campaign at that time by a man now in state prison. He claimed that Poulson was part of a plan to fire Police Chief William Parker back in 1953, but hadn’t done so when the plot was exposed.

Poulson, when asked, said these charges were “hooyey.”⁴³ Police Chief Parker and the police commissioner denied there was any such plot. But, retorted Yorty, how would the police chief know what Poulson intended to do back in 1953? Why is the chief, who should be non-political, speaking for Poulson? And didn’t Parker know about the campaign contribution?⁴⁴ In short, Yorty kept making charges that Poulson – who was trying to be above the fray after his dabbling with the “underworld” charge against Yorty – had to deny defensively.

Calamity and Filth

The state of the campaign, by this point, had the *Times* in a panic. In an editorial entitled “Either Poulson or Calamity” of April 27, it promoted Poulson to the rank of “a very superior mayor,” up a notch from “a superior mayor” in the editorial it ran just after the primary. Yorty, in contrast, was a “political adventurer” who made “a fantastic charge” against Poulson on the police issue, and was improperly using the trash collection issue to get elected. Yorty was saying things that are “self-evidently false.” But he nonetheless appealed to misguided people “who enjoy doubting a woman’s virtue or hearing that the Civil War was fixed.” Compared with the “municipal wreckage” a Yorty victory would bring, Yorty “has made Mayor Poulson indispensable.”⁴⁵

Of course, it would be hard to be seen as indispensable if the rumors of Poulson’s ill health persisted. As noted, the rumors had originated with McGee during the primary race, although Yorty picked them up

⁴⁰Howard Kennedy, “Samuel W. Yorty Seeks New Career,” *Los Angeles Times*, April 24, 1961, p. B1

⁴¹Howard Kennedy, “Poulson, 65, Still Seeks Hard Work,” *Los Angeles Times*, April 23, 1961, p. E1. Author Kennedy of the two profiles was normally the newspaper’s labor editor.

⁴²Howard Kennedy, “Samuel W. Yorty Seeks New Career,” *Los Angeles Times*, April 24, 1961, p. B1

⁴³Howard Kennedy, “Yorty Implies Poulson in Deal Against Police,” *Los Angeles Times*, April 25, 1961, p. 18.

⁴⁴Carlton Williams, “Poulson Hurls Lie at Yorty Police Charges,” *Los Angeles Times*, April 26, 1961, p. B2.

⁴⁵Editorial: “Either Poulson or Calamity,” *Los Angeles Times*, April 27, 1961, p. B4.

for his campaign and, at one point, sent a telegram to Poulson suggesting he withdraw for health reasons.⁴⁶ In an effort to disprove the health rumors, Poulson checked himself into Good Samaritan Hospital to be certified as fit by a team of doctors. Meanwhile, Yorty continued to charge that Poulson's "machine" was smearing him with communist insinuations:

*"The professional purveyors of filth running Poulson's campaign are the low types who discourage our citizens from taking part in politics. They drag democracy down to the gutter while they carry on their campaign of lies and deceit. Their tactics are subversive of real democracy and an insult to the intelligent voters of Los Angeles. This will be proved when the filth purveyors go down to smashing defeat on May 31."*⁴⁷

The *Times* ran a photo of Poulson smiling as a nurse in Good Samaritan Hospital checked his blood pressure. Not surprisingly, doctors there gave him a clean bill of health. But they admitted that they had worsened his laryngitis problem by putting instruments down his throat to see what was wrong.⁴⁸

Downtown Power

Meanwhile, Poulson complained about "a lack of concern for truth" by Yorty. The mayor said he had planned to debate Yorty, but had reconsidered that decision due to Yorty's "outright, undisguised, unsubstantiated lies."⁴⁹ Yes, said Poulson, he *was* backed – as Yorty said – by "powerful" downtown supporters, but "they are powerful because they are part of a dedicated civic-minded citizenry."⁵⁰

The *Times* editorialized again that a Poulson victory was "a civic necessity":

"Suppose Mr. Yorty were elected mayor (save the day!), what would he do to liquidate 'self-interest'? Here are some guesses:

He might, after what has passed between them, try to get rid of Chief of Police Parker, who has built one of the ablest police forces in the United States.

He might try to sack Administrative Officer Sam Leask, the city government's durable and unswerving fiscal conscience.

He would sabotage and attempt to destroy the city's rubbish and disposal program...

*As things stand, a third term for Mayor Poulson is a civic necessity. One term for Candidate Yorty would be too many."*⁵¹

But what the *Times* saw as virtuous civic servants who would be threatened by a Yorty regime, Yorty saw as folks who had a "conflict of interest" and who contributed to "campaign slush funds." Indeed, Yorty might get rid of them. "Once entrenched," said Yorty, "these leeches can be swept from power only by a

⁴⁶Carlton Williams, "Humorous Note Enters Mayor Race," *Los Angeles Times*, May 10, 1961, p. A12.

⁴⁷Carlton Williams, "Poulson to Undergo Health Check to Silence 'Whispering Campaign,'" *Los Angeles Times*, April 30, 1961 p. E1.

⁴⁸"Five Doctors Find Poulson's Health Good," *Los Angeles Times*, May 4, 1961, p. B1.

⁴⁹"Poulson Accuses Yorty of 'Undisguised Lies,'" *Los Angeles Times*, May 2, 1961, p. A9.

⁵⁰Carlton Williams, "Mayor Lists Backers, Asks Yorty to Do Same," *Los Angeles Times*, May 1, 1961, p. B1.

⁵¹Editorial: Candidate Yorty's Civic Reform," *Los Angeles Times*, May 3, 1961, p. B4.

change in administration.”⁵² Those in authority were indeed nervous about what a Yorty victory might mean for them. The president of the Police Commission, Duncan Shaw, denounced a Yorty proposal to add 5,000 new cops as fiscally impossible. And he associated Yorty with “Las Vegas gambling interests.”⁵³ Yorty denied ever supporting adding 5,000 new police and said the number came from a report by the Police Commission itself.⁵⁴

More Trash

And the trash issue was now hot. Just the mention of it seemed to tar a candidate, so the *Times* – after an investigation – revealed that Yorty had once invested in a private dump that had made a pitch to the County to enlarge its land area. The plan never came to fruition, but a County employee resigned (and then took another County job) after he was accused of helping Yorty and other investors. The story was complicated and ambiguous. But the idea was that if Poulson had a rubbish problem, so did Yorty.⁵⁵ Poulson challenged Yorty “to tell the truth about your connection with the rubbish business.”⁵⁶ A related *Times* editorial referred to Yorty as a “dump peddler.”⁵⁷

Yorty struck back with an allegation that a city contract with a private dump operator and local politician had been a “give-away” to the operator/politician. Yorty said he (Yorty) had a client of his law practice who had offered the City a better deal but it was rejected.⁵⁸ Poulson charged that Yorty’s dump had various health and other legal violations such as rats.⁵⁹ And an unnamed source at the Board of Public Works was said by the *Times* to have “refuted” Yorty’s charge of a bad dump deal for the City.⁶⁰

TV and Gambling

Of course, Yorty was not relying on the *LA Times* for good publicity. He castigated newspaper coverage as constituting “a sorry day for journalism in Los Angeles.”⁶¹ He was making use of television, the latest electronic medium which had become ubiquitous by 1961, certainly among households likely to produce voters. In the same edition of the *Times* in which the dump peddler editorial was published, there appeared an ad for a weekly evening “Report to the Citizens” by candidate Yorty on KTTV, Channel 11.

Apart from paid time, Channel 11 featured an evening news program with George Putnam, a conservative commentator who seemed to support Yorty. Putnam gave Yorty substantial free airtime during the campaign and Yorty gave Putnam newsworthy charges to air. Ironically, the station was

⁵²“Yorty Blasts Poulson Aides,” *Los Angeles Times*, May 3, 1961, p. B2.

⁵³“Police Board Head Calls Yorty Plan ‘Claptrap,’” *Los Angeles Times*, May 4, 1961, p. B17.

⁵⁴“Yorty Denies Urging 5,000 More Police,” *Los Angeles Times*, May 5, 1961, p. B6.

⁵⁵Carlton Williams, “Yorty’s Past Rubbish Dump Interests Shown,” *Los Angeles Times*, May 4, 1961, p. B1.

⁵⁶Carlton Williams “Yorty Given Challenge by Poulson,” *Los Angeles Times*, May 5, 1961, p. B1.

⁵⁷Editorial: The Rubbish in Mr. Yorty’s Closet,” *Los Angeles Times*, May 5, 1961, p. B4.

⁵⁸Howard Kennedy, “Give-Away in Rubbish Deal Claimed,” *Los Angeles Times*, May 8, 1961, p. B1.

⁵⁹“Poulson Charges Dump Violations,” *Los Angeles Times*, May 8, 1961, p. B1.

⁶⁰“Works Board Rejects Yorty Rubbish Charges,” *Los Angeles Times*, May 8, 1961, p. B2.

⁶¹Howard Kennedy, “Yorty Hits Newspapers for Supporting Poulson,” *Los Angeles Times*, May 6, 1961, p. A8.

owned by the *Los Angeles Times*.⁶² Presumably, the *Times*' owners could have shut down Putnam. But perhaps they underestimated the power of television to move voters relative to newspapers.

Then there was the gambling matter which had already begun to surface with the "underworld" charge by Poulson (and the resulting lawsuit by Yorty) and the references to Yorty's connections to Las Vegas. In another *Times* investigation, it was revealed that Yorty, in 1955, had assisted legal clients in trying (unsuccessfully) to obtain a gambling license for a Las Vegas casino.⁶³ The investigation was coordinated with an editorial arguing that Yorty had "a tolerance for gambling."⁶⁴ As in the case of Yorty's dump investment, however, nothing nefarious was demonstrated. But the two investigations – dump and gambling – served to suggest that something was not quite right about Yorty, even if it was not quite clear what exactly was wrong.

Cows, Bulls, and Seniors

Yorty's campaign could also conduct investigations that, while not showing anything illegal, generated public perceptions of shady activity. It turned out that Poulson had invested in a cattle ranch in Oregon – the amount of the investment a matter of dispute. (Poulson was born in Oregon and had family property there.) Poulson claimed that the investment represented his life savings, a "nest egg" for his wife and himself. But Yorty rejected Poulson's protestations as "shocking and feeble." He asserted that news of the mayor's holdings had "shocked the citizenry."

In response, Poulson said he would sell all his cattle to Yorty for \$25,000 to show they weren't as valuable as Yorty had claimed.⁶⁵ Yorty had shown pictures of a bull on TV which Poulson claimed was far more valuable than any bull he actually owned.⁶⁶ Indirectly, however, talk of nest eggs and retirement savings pointed to the age/health issue for Poulson. And Yorty declined the offer to invest in Poulson's Oregon property saying he would confine his investments to LA, a slam on directing funds out of the local area. In addition, with Poulson focused on his Oregon holdings, Yorty made the case that Poulson was neglecting important issues in the City. Smog from cars, for example, could be addressed by newly-developed devices that could be put on automobiles. But that solution was being neglected by Poulson while the mayor had his mind on his cattle ranch and the voters suffered from bad air.⁶⁷

With regards to age, yet another issue arose. Los Angeles was the home in the 1930s and 1940s of various "pensionite" movements, proposals to provide state or federal pension-type payments to senior citizens. As younger people flocked to southern California after World War II, these movements waned in political significance, but there were still veterans of the various pensionite groups within the voting population. Yorty proposed a senior citizens committee that would deal with such issues as access to public facilities and transit for the aged.⁶⁸ A Poulson spokesperson replied that the mayor was already

⁶²Bollens and Geyer, pp. 125-126. It appears, based on ads in the *Los Angeles Times*, that Yorty's paid program apparently became more frequent than weekly as the campaign continued. He also ran his program on another station.

⁶³Carlton Williams, "Gambling License Fee for Yorty Verified," *Los Angeles Times*, May 8, 1961, p. B1.

⁶⁴Editorial: "Don't Gamble on Yorty!" *Los Angeles Times*, May 9, 1961, p. B4.

⁶⁵Carlton Williams, "Poulson Deflates Yorty's 'Cattle Baron' Balloon," *Los Angeles Times*, May 14, 1961, p. K1.

⁶⁶Carlton Williams, "Mayor Answers Attack on Oregon Holdings," *Los Angeles Times*, May 10, 1961, p. B1; Howard Kennedy, "Yorty Rejects Poulson Explanation of Ranch," *Los Angeles Times*, May 11, 1961, p. B1.

⁶⁷"Poulson, Yorty Mayoral Race Enters Last 10 Days," *Los Angeles Times*, May 21, 1961, p. K1.

⁶⁸"Program for Senior Citizens Urged by Yorty," *Los Angeles Times*, May 10, 1961, p. B1.

taking care of the needs of senior citizens and that it was “completely irresponsible” to suggest otherwise.⁶⁹ Meanwhile, at the other end of the age spectrum, Yorty, movie actress Jane Mansfield, and others judged a beauty contest for the Studio City Chamber of Commerce.⁷⁰

Deposition Time

May 11 – originally the day after the date on which Poulson said he would personally begin his campaign – featured a dramatic event. As noted earlier, Yorty had sued Poulson for slander over his charge that Yorty was connected to the “underworld.” Poulson was required to provide a response in a deposition hearing that took place in public in City Hall. Poulson repeated his charge in a written statement which he submitted as part of the deposition process.

In what the *Los Angeles Times* reported on the front page as “scenes approaching pandemonium,” Poulson had insisted, on advice of his attorney, on reading his statement out loud. Yorty’s lawyer then said that he would file a libel lawsuit against Poulson to accompany the slander lawsuit. Yorty added that he would sue any newspaper that published Poulson’s remarks for libel.⁷¹ (The Times, however, summarized them, but wasn’t sued. They basically involved the unsuccessful Las Vegas license and the never-enacted bill legalizing bookmaking in the 1930s.) Yorty and his lawyer abruptly left the hearing, saying they would ask the court to appoint a commissioner to take over the deposition. And they petitioned the court to add three Poulson campaign officials to the slander suit.⁷²

When the case came back into court May 22, nine days before the election, the presiding judge castigated both sides for their conduct during the aborted deposition hearing. He rejected the argument by Poulson’s attorney that the lawsuit was just a political stunt that would disappear after the May 31 election and ordered the mayor to appear for another deposition. But he angrily declined to allow the “publicity” that would emerge from a demand by Yorty’s attorney for radio and television coverage.⁷³

As it turned out, when the new deposition hearing was about to be held two days before the general election, it was pointed out that since three new defendants had been added, they hadn’t had adequate time to prepare. The judge then delayed the deposition until July, i.e., after the election and after whoever won the election would be in office. Yorty charged that the delay was caused by Poulson’s desire “to run and hide.”⁷⁴

Double-Dealing Democrats and Liquor

Yorty did not have official Democratic Party support because of his efforts for Nixon over Kennedy in the 1960 presidential election. In fact, prominent Democrats had endorsed Poulson. So Yorty charged that although the mayoral election was supposed to be nonpartisan, “double-dealing” Democrats had colluded with local Republicans to create a *de facto* Republican machine. The machine, he said, had actually kept Democrats out of the mayor’s office for many years, despite a Democratic advantage in voter registration:

⁶⁹ Carlton Williams, “Poulson’s Program for Senior Citizens Lauded,” *Los Angeles Times*, May 11, 1961, p. B1.

⁷⁰ “Queen Contest Deadline Set,” *Los Angeles Times*, May 11, 1961, p. E6.

⁷¹ Carlton Williams, “Violent Clashes Mark Poulson, Yorty, Action,” *Los Angeles Times*, May 12, 1961, p. 1.

⁷² “Yorty Accuses Three More of Conspiracy,” *Los Angeles Times*, May 17, 1961, p. B1.

⁷³ “Judge Hits Both Sides in Poulson-Yorty Suit,” *Los Angeles Times*, May 23, 1961, p. B8.

⁷⁴ Carlton Williams, “Poulson and Yorty Meet, Exchange Verbal Blasts,” *Los Angeles Times*, May 30, 1961, p. 1.

*"The real hypocrisy is now emerging. Republicans are to be ordered to vote for Poulson because he is a Republican. Democrats are told they must be nonpartisan and must not support me because I have a record of independence. In other words, true nonpartisanship, to which the Poulson press gives lip service, is to be twisted and turned to mean nonpartisanship only for the Democrats."*⁷⁵

In short, the issue of lack of support from his own party was turned on its head. True Democrats should support Yorty because he was the target of corrupt Democrats who were in fact pushing Republicans. "Fair-minded" Republicans, in turn, should support Yorty because he was independent of the Democratic machine, and thus nonpartisan.

As this contest of who was really what was being played out, a Poulson supporter released what he said was a document showing that Yorty had the backing of the California Tavern Association.⁷⁶ Demon rum, it seemed, was secretly supporting Yorty. Indeed, a prominent group of black ministers endorsed Poulson citing Yorty's alleged proclivities toward gambling, alcohol, and other forms of vice.⁷⁷ Yorty came back with an endorsement of the Baptist Ministers Union.⁷⁸

Alcohol, of course, is sinful to some, and – in excess – not good for one's health. But the health issue continued to be raised by Yorty, not with regard to drinking, but with regard to Poulson. Poulson's campaign machine was endangering the mayor's health by pushing him to campaign, according to Yorty. Given the mayor's alleged fragile health, the machine was "endangering his very life by its callous and total indifference to his physical condition."⁷⁹

Broken Records, Valley Interests, and Commissioners

Given the ongoing charges from Yorty, it was hard for Poulson to pursue his planned strategy of a positive campaign and of being above what he had termed "mudslinging." But he depicted himself as doing his best to carry on his mayoral duties while discussing the issues of the day:

*"I had hoped this campaign would be a clean one, but my opponent had different ideas. I have frequently answered the distorted, ridiculous accusations of my opponent. However, he persists in bringing up false charges again and again. As long as he keeps up this 'broken record' tactic, I'll not lower myself to satisfy him with an answer. I'll stick with the real issues. Mr. Yorty can play with his mud."*⁸⁰

(For younger readers, "broken record" refers to the tendency of phonograph records, when scratched, sometimes to jump back a groove, thus repeating a sound over and over.)

Even in carrying out mayoral duties, however, Poulson was vulnerable to criticism. Poulson's 1961-62 budget proposal, for example, was, according to Yorty, fiscally irresponsible with deficit financing and

⁷⁵ Howard Kennedy, "Yorty Blasts Democrats Non-Support," *Los Angeles Times*, May 14, 1961, p. K1.

⁷⁶ Carlton Williams, "Poulson Plans Press Conferences, TV Talks," *Los Angeles Times*, May 15, 1961, p. B1.

⁷⁷ "Negro Minister Group Votes Poulson Support," *Los Angeles Times*, May 20, 1961, p. 10.

⁷⁸ Howard Kennedy, "Yorty Says Statements Expose Poulson 'Hoax,'" *Los Angeles Times*, May 25, 1961, p. B1.

⁷⁹ Howard Kennedy, "Yorty Charges Poulson Health is Sacrificed," *Los Angeles Times*, May 15, 1961, p. B1.

⁸⁰ Carlton Williams, "Mayor Puts Campaign Issues First," *Los Angeles Times*, May 16, 1961, p. B1.

depletion of city reserves. Property taxes were to be raised as part of the new budget, a move never popular with homeowners.⁸¹

Although it is not clear the degree to which formal polling was being undertaken, there was an awareness that Yorty's message of opposition to the powers-that-be in downtown LA and City Hall had special resonance in the San Fernando Valley (where many of those homeowners resided). Poulson tried to address Valley concerns by sympathizing with underrepresentation of the Valley on the city council and the need for more freeways there.⁸² Of course, changing election districts for the city council and developing new freeways were projects outside the authority of the mayor. The former is in the hands of the council itself. And the latter was in the hands of the state.

Poulson got a boost in the Valley when city councilman Patrick McGee, the primary opponent who came in third, and McGee's campaign chief, gave Poulson an endorsement. Republican McGee represented part of the Valley. Shortly before his announcement, McGee had met with former Vice President Richard Nixon, now back in California (and soon to run unsuccessfully for governor). McGee denied Nixon had offered him anything in return for the endorsement of Poulson. He refused to "recant" any of his criticisms of Poulson in the primary campaign, but he said that of the two candidates, Poulson was "the better man."⁸³ However, the Valley-area co-chair of McGee's earlier campaign endorsed Yorty and his "superior qualities for leadership."⁸⁴

The *Times*, of course, had no doubt who was the better man with superior leadership qualities. In an editorial, it speculated that if Yorty won, he wouldn't be able to find capable people to be commissioners or committee members for the various city services and functions. Either Yorty wouldn't be able to recruit quality persons willing to work for him, or he wouldn't even want folks of requisite quality. Voters were becoming aware, according to the *Times*, that selecting Yorty would be "very chancy" and would "overturn good government."⁸⁵

Yorty apparently was not worrying about filling commission appointments. He promised, if elected, to fire all of the sitting police commissioners. One, he said, was indirectly involved with a Gardena poker palace. And he had no faith in the others, given known vice operations that were operating in areas of the City. Members of the Police Commission then declared that if Yorty were elected, they would quit.⁸⁶ Yorty retorted that by injecting politics into the election campaign, the police commissioners had already disqualified themselves and shouldn't wait for the election; they should quit immediately.⁸⁷

In an editorial response five days before the election, the *Times* praised the police commissioners and other commissioners appointed by Poulson. Los Angeles, the newspaper said, was "the best governed of the great American cities." It referred back to the 1938 police-related scandal that led to the recall of then-mayor Frank Shaw as evidence of what a "venal" Commission could do. Citizens, the *Times*

⁸¹"Yorty Assails Poulson on City Budget," *Los Angeles Times*, May 21, 1961, p. K1.

⁸²Carlton Williams, "Mayor Puts Campaign Issues First," *Los Angeles Times*, May 16, 1961, p. B1.

⁸³Carlton Williams, "McGee Campaign Chief Comes out for Poulson," *Los Angeles Times*, May 17, 1961, p. B1; Carlton Williams, "McGee for Poulson in Mayor Race," *Los Angeles Times*, May 18, 1961, p. 1.

⁸⁴Howard Kennedy, "Yorty Endorsed by Teamsters Council 42," *Los Angeles Times*, May 19, 1961, p. B1.

⁸⁵Editorial: "Poulson's Commissioners," *Los Angeles Times*, May 19, 1961, p. B4.

⁸⁶Howard Kennedy, "Yorty Promises to Fire Police Commissioners," *Los Angeles Times*, May 24, 1961, p. B1; Carlton Williams, "Police Board to Quit if Yorty Wins," *Los Angeles Times*, May 25, 1961, p. B1.

⁸⁷"Yorty Again Accuses Police Commissioners," *Los Angeles Times*, May 26, 1961, p. B1.

believed, were finally waking up to the danger a Yorty victory would pose. If the stay-at-home voters who now know that the choice is “Poulson or disaster” will just turn out, Poulson will surely win.⁸⁸

Old Postage, the Innocent Bystander, and Car Prices

Yet another controversy in the election campaign involved Yorty’s use of the “franking privilege” while a member of Congress. Congressional representatives have the right to free postage as a way of communicating with constituents by mail. But they are not supposed to use the privilege for political mailers. The charge – ostensibly on behalf of a group called the Property Taxpayers Council – was that then-Congressman Yorty had abused the franking privilege in his unsuccessful campaign for the U.S. Senate to the tune of almost \$250,000.⁸⁹

As with every issue that came up in the campaign, the charge soon led to a countercharge. Yorty denied that he had misused the franking privilege. And the source of the charge became a matter of controversy. The original charge had been made by Philip Watson, who was identified as an “official” of the Property Taxpayers Council. (Watson was later elected LA County Assessor.) But the president of the Council said that Watson was neither authorized to speak for the organization, nor was he an official of it. Yorty thus pointed to the “repudiation of Mr. Watson” in his response.⁹⁰

And then the rubbish dump returned in a new connection. The *Times* reported that Yorty had a partnership in his dump business with a fellow named Joseph Satin who had pleaded guilty in 1948 to an offense that involved a mining venture and some stolen pipe. He had pleaded guilty, was fined, and served a five-year term of probation.⁹¹

Yorty said in response that Satin was in fact a legal client, that he (Yorty) had no knowledge of his prior conviction, and that in any case Satin was “an innocent bystander in a political fight.” Poor Mr. Satin had paid for his crime and “should be permitted to rear his five children in this community without being subjected to an unwarranted attack.” Moreover, Yorty hoped that “the decent people of Los Angeles will feel as revolted as I do by this exhuming of the past conduct” of Mr. Satin. They would certainly be considering “the irreparable damage to innocent children who must go to school and face their classmates after seeing their father’s alleged past wrong dug up long after he has atoned.”⁹² Satin himself said that his past conviction, in fact, was not in 1948, as the *Times* reported, but ten years earlier in 1938.⁹³

Finally, there were charges of price fixing of automobile dealers, and particularly by Martin Pollard, a car dealer who was also Poulson’s campaign manager. Yorty said that the U.S. marshal was hunting for Pollard to serve him a subpoena and call him before a grand jury looking into such price fixing.⁹⁴ Pollard responded that he wasn’t evading a subpoena, but had been out of town lobbying in Sacramento. Many car dealers were being subpoenaed, he said, for a probe about which he had no knowledge.⁹⁵

⁸⁸Editorial: “We Cannot Take a Chance,” *Los Angeles Times*, May 26, 1961, p. B4.

⁸⁹Carlton Williams, “Poulson Supporters Dig Into Yorty Race of ’54,” *Los Angeles Times*, May 22, 1961, p. B1.

⁹⁰“Mayoral Stand Denied by Taxpayers Council,” *Los Angeles Times*, May 23, 1961, p. B1.

⁹¹“Yorty Link to Mining Deal Told,” *Los Angeles Times*, May 28, 1961, p. F1.

⁹²“Yorty Assails Attack on ‘Innocent Bystander,’” *Los Angeles Times*, May 28, 1961, p. F1.

⁹³“Just Client of Yorty’s, Satin Says,” *Los Angeles Times*, May 30, 1961, p. 17.

⁹⁴Howard Kennedy, “Yorty Raps Poulson as Desperate,” *Los Angeles Times*, May 31, 1961, p. 6.

⁹⁵“Poulson Aide Charges Yorty ‘Distortion,’” *Los Angeles Times*, May 31, 1961, p. 7.

And with that final controversy, the contest was in the hands of the voters. In its final Election Day editorial on the front page, the *Times* declared:

*"Today is the day when a favorable opinion of Poulson and the city government is no substitute for an X after Poulson's name. You have to go to the polls. Vote, we say, or be sorry."*⁹⁶

But it was the *Times* that turned out to be sorry, when Yorty received 51.5% of the vote. At his victory celebration after the polls close, Yorty told his supporters, "I don't blame you for shouting. We have been silenced for so long... We proved that democracy does work."⁹⁷

Reflecting on his defeat a year later, Poulson blamed his loss on the enemies he had made in bringing the Dodgers to LA.⁹⁸ If so, such enemies were part of a larger group that had grown tired of the downtown LA elite making decisions, whether about baseball or anything else. Two days later, the *Times* lamented the Yorty victory in an editorial entitled, "There's Nothing Left but Hope." It's them was that, while there was indeed a downtown elite, the voters will soon miss them now that they are gone:

*"The threat is real. The marching you hear is the retreat of what Mr. Yorty calls 'this vicious downtown clique that has long dominated City Hall,' and the marching beat is thumped out on the tubs of the television performers. We love our city and we weep for it. Beyond that we can do nothing but watch and report – and hope that the voters will turn out next time."*⁹⁹

Aftermath

In the month between the election and the start of Yorty's first term (July 1), the *Times* continued to cluck and lament. Various city officials resigned (rather than wait to be removed). Two members of the Airport Commission later refused to resign and were removed. Yorty initially said he needed to "school" Police Chief Parker, but didn't ask him to resign.¹⁰⁰ He did question whether police investigative files had been used in the election against him. The mayor-elect and the chief eventually had a friendly get-together and Parker stayed on. Yorty also retained two of the members of the Police Commission. A *Times* editorial declared cautiously that "the Police Department Seems Safe."¹⁰¹

Yorty appointed the black attorney who he claimed had induced him to run for mayor to the Police Commission, and promised also to appoint a Mexican-American. As analyses of the pattern of votes developed, it appeared that Yorty had made inroads with minority voters who – like the growing voting population in the San Fernando Valley – had reasons not to be enamored with the downtown elite.¹⁰²

⁹⁶Editorial: "Vote or Be Sorry," *Los Angeles Times*, May 31, 1961, p. 1.

⁹⁷"Yorty Hails Election as People's Victory," *Los Angeles Times*, June 1, 1961, p. 1.

⁹⁸Obituary: Alfred E. Clark, "Norris Poulson: Mayor Who Lured Dodgers to Los Angeles, Dies at 87," *New York Times*, September 26, 1982.

⁹⁹Editorial: "There's Nothing Left but Hope," *Los Angeles Times*, June 2, 1961, p. B4.

¹⁰⁰Howard Kennedy, "Yorty Pledges Clean Sweep for City Hall," *Los Angeles Times*, June 2, 1961, p. 1.

¹⁰¹Editorial: "The Police Department Seems Safe," *Los Angeles Times*, June 23, 1961, p. B4.

¹⁰²Yorty's later opponent, Tom Bradley, attributes the support Yorty received from black voters in 1961 to the expectation he would fire Chief Parker and a general impression that Poulson was unresponsive to black concerns. Tom Bradley, "The Impossible Dream Oral History Transcript," UCLA Oral History Program, 1984, pp. 96, 99. Referenced as "Bradley Oral History" in later footnotes.

Shortly after taking office, in fact, Yorty favored appointment of a black city council representative to fill a vacant seat over the opposition of Valley interests that wanted to redistrict and move the seat to their area. It was only after the Watts Riot (in 1965 after Yorty was re-elected), and the two re-election campaigns against Tom Bradley (in 1969 and 1973) that Yorty took on the racist label for which he is remembered – if he is remembered at all – today.¹⁰³

Although establishment Democrats had favored Poulson, Yorty also had a friendly post-election get-together with Democratic Governor Pat Brown. He also met with Democratic Vice President Lyndon Johnson at a ceremony involving a new terminal at the airport. Yorty said he would drop the lawsuit against Poulson if Poulson apologized. Poulson didn't apologize, but indicated he wished the new mayor well. Two days before Yorty took office, the lawsuit was dropped. Yorty and Poulson issued a joint statement that they had been friends for twenty-five years and now regretted the "harsh charges" of the campaign.¹⁰⁴ Yorty also promised that he would give downtown LA the attention it deserved, not special treatment, but not neglect, either.

The city council removed the controversial property tax increase from the budget Poulson had submitted in the last weeks of his term. Yorty hinted at budget cuts for cultural affairs. But he ultimately supported the efforts of Dorothy Chandler (of the Chandler family that owned the *LA Times*) to construct the Music Center. By the time he ran for a second term, the *Times* supported him.

Yorty's lawyer succeeded through litigation in voiding the oil leases the City had signed, and which he had questioned. The trash issue remained on the table, but eventually the recycling and inconvenient pickups were halted. New commissioners were appointed to various boards. Basically, Yorty started his first term without major hiccups and the calamity the *Times* had feared didn't occur. The world, in short, continued to turn.

Lessons Learned

We started this chapter with reference to the 2016 presidential election and the unexpected election of Donald Trump, the outsider candidate. Yorty was an outsider, but in a different sense than Trump. Yorty was a long-time politician who had plenty of experience in running for office.

Yorty knew how government worked. So it is not surprising that despite the *Times*' pre-election prognostications, his administration got off to an orderly start. Nor is it surprising that rather than hold on to campaign grudges, he sought to make peace with former opponents. It is not surprising that he would seek to patch up things with the *Times*. Why make a permanent enemy of the major newspaper in the local area if there was no need to do so? In all these ways, Yorty was very different from Trump who had limited knowledge of government, who started his administration without many key officials in

¹⁰³Yorty supported the appointment of Gilbert Lindsay, the first black city council member. Tom Bradley's biography, which not surprisingly takes a dim view of Yorty, suggests he supported Lindsay to thwart Bradley. But it also says Yorty supported Bradley unsolicited when the latter ran for city council. J. Gregory Payne and Scott C. Ratzan, *Tom Bradley: The Impossible Dream* (Roundtable Publishing, 1986), pp. 63, 67. Yorty's version in his Oral History was that he supported Bradley initially, but Police Chief Parker told him Bradley was a bad choice so he stopped supporting him. Yorty Oral History, p. 117. Bradley's Oral History says that Yorty supported him indirectly through staff members, but never made a statement himself. Bradley Oral History, p. 105.

¹⁰⁴"Yorty Drops Slander Suit on Poulson," *Los Angeles Times*, June 29, 1961, p. B1.

place and with infighting in the White House, and who continued after the election to attack former opponents and the news media.

But there are also similarities. Yorty held inconsistent political views over time, starting out left and ending right, but never 100% of one or the other. His goal was to win office, not to institute a particular agenda. Agendas were instruments to win, not reasons to win. Yorty was not one to apologize; he would officially “regret” that harsh accusations were made in the 1961 mayoral campaign, but never quite say he was sorry he had made them. His UCLA Oral History interview in the 1980s is basically a self-justification for whatever he did throughout his career.

Yorty was a man with what would later be called “self-esteem,” and plenty of it. Certainly, he never would accept the criticisms of his campaigns against Bradley. According to Bradley, after he finally defeated Yorty in 1973, Yorty never called him to give the traditional congratulations expected of losing candidates.¹⁰⁵ The Watts Riot might have occurred on Yorty’s watch, but he had no regrets about his actions before, during, or after that event. When Yorty lost an election, he was the victim, not just the guy who was less popular.

Yorty had a keen sense of the dissatisfaction within the electorate with the downtown elite that had dominated LA politics and government. In contrast, the downtown elite had no such sense of themselves; they couldn’t imagine that what they viewed as the civic duty of the right sort of people to guide municipal affairs would not be appreciated by ordinary folks. The problem with those ordinary folks was that they didn’t bother to turn out in sufficient numbers on Election Day to show their appreciation.

Yorty also understood that the relatively new medium, television, could be used to compete with newspaper coverage. And he understood that constantly making charges against his opponent – attack, attack, attack – made for good TV. It was exciting. Indeed, the *LA Times* itself could not ignore him, even if its reporting was slanted. It’s in that sense that 1961 in Los Angeles was a forerunner of 2016 nationwide.

¹⁰⁵ Bradley Oral History, p. 184.

CHAPTER 7

Prioritizing Workplace Electric Vehicle Charging Station Investments in Los Angeles County

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Los Angeles County has a reputation for its car-centric culture. Over many decades the region has developed around transportation infrastructure for the personal automobile. As a consequence of its reliance on gasoline-powered vehicles, transportation in Los Angeles has major impacts on air quality and climate change. Plug-in electric vehicles (PEV) emit fewer greenhouse gases (GHG) and air pollutants when compared against conventional gasoline powered vehicles. PEVs are a good substitute for gasoline-based transportation because they offer the same individual mobility benefits as conventional vehicles, allowing drivers of conventional vehicles to switch to PEVs with few behavioral changes. Furthermore, PEVs utilize pre-existing transportation infrastructure such as roads and highways, an especially important attribute in car-dependent regions such as Los Angeles County.

However, PEVs diverge from gasoline vehicles on the issue of fueling infrastructure. Unlike the mature market of readily available gasoline stations, the electric vehicle charging station market is still in the early stages of development. While most PEV users enjoy the ability to charge their vehicle at home, non-residential charging stations are an important complementary good to PEVs. The number of miles that PEVs drive on electric power are dependent on the availability of non-residential charging infrastructure (Kassakian et al 2015). The public benefits of PEVs lends urgency to the rapid development of the nascent electric vehicle charging market. However, without continuing policy support, the momentum of market growth will not be maintained (International Energy Agency 2016). Unlike gasoline stations which fuel vehicles in minutes, charging a PEV may take several hours. Generally, electric vehicle charging stations must be located in parking areas where drivers will leave their vehicle for periods longer than one hour (ECotality 2013). Commuters parking at or near their place of work are likely to leave their vehicles for the entirety of their workday, creating a charging opportunity for those who drive PEVs. Accordingly, increasing the availability of workplace charging stations can increase the fraction of commute miles driven on battery power (Kassakian et al 2015).¹

¹ This chapter is based on an Applied Policy Project submitted by the authors as part of that program to the Southern California Association of Governments (SCAG).

Potential Workplace Charging Locations in Los Angeles County

Regulators in both California and at the federal level have identified PEV adoption and use as an important component to meeting statutory requirements for both GHG and local air pollution. Under California's Global Warming Solution Act of 2006 (Assembly Bill 32), the state has committed to reductions in GHG to 1990 levels and 40% below 1990 levels by 2020 and 2030, respectively (Air Resources Board 2014). Additionally, under both federal and state clean air laws, California must meet strict ambient air quality standards (Air Resources Board 2016). Both California and the Federal Government have adopted programs that offer policy support to the PEV market.

California's Zero Emission Vehicles (ZEV) Program requires manufacturers offering vehicles for sale in California to bring a specified number of ZEVs to market in California each year. The ZEV classification includes other technologies such as hydrogen fuel cell vehicles. However, the vast majority of ZEV program mandated sales have been PEVs (Air Resources Board 2017).

In addition to California's ZEV program quota, both California and the federal government offer individual incentives for PEV purchasers. Federal tax credits up to \$7,500 are available for purchasers of qualified PEVs through the Plug-In Electric Drive Vehicle Credit (Internal Revenue Service 2017). California offers incentives up to \$7,000 for qualified PEVs through the Clean Vehicle Rebate Project (Air Resources Board 2017). Furthermore, the California state government incentivizes PEV sales by providing early adopters of PEVs with decals granting single occupant access to high occupancy vehicle lanes (Air Resources Board 2017). High occupancy vehicle lanes allow drivers to bypass some freeway congestion, saving drivers' time and increasing the value proposition of PEV ownership.

Electric utilities offer programs incentivizing workplace charging infrastructure to customers across their entire service areas (Department of Energy 2017). However, such programs do not take into account spatial variations that make charging infrastructure more beneficial in some areas over others. Therefore, these programs may not efficiently incentivize the deployment of charging infrastructure.

This chapter examines where workplace charging infrastructure should be installed for vehicles in Los Angeles County. As a state metropolitan planning organization, the Southern California Association of Governments (SCAG) is responsible for both achieving transportation related GHG reductions as mandated by the Sustainable Communities and Climate Protection Act of 2008 (Senate Bill 375) and meeting transportation air quality standards set by state and federal clean air regulations (SCAG 2017). The California Energy Commission has awarded SCAG grant funding through its Alternative and Renewable Fuel and Vehicle Technology Program’s “Charging Infrastructure Awards” (California Energy Commission 2017). These grants are to be used to “support deployment of charging stations” (California Energy Commission 2017). A portion of the grant funding that SCAG receives will be devoted to investment in workplace charging.

Where are Possible Sites?

We begin by identifying locations (referred to as zones) in Los Angeles County that are candidates for investment due to their potential to benefit from workplace charging infrastructure investment. For each zone, we calculate the total potential improvement in electric vehicle miles traveled (eVMT) that can be obtained through electric vehicle charging infrastructure investment and assess whether the zone is in a disadvantaged community. These two criteria are used to determine a each zone’s investment priority.

This analysis structures our recommendations by assigning each zone to investment priority tiers (from high to low) commensurate with its investment potential. Through our analysis we find that as many as 78,500 more miles per day could be driven on electric power if there were increased charging infrastructure investment. Importantly, disadvantaged communities are well represented in each investment tier. Much of the daily increase in eVMT is expected from a small number of zones; the top thirteen percent of charging station locations have more potential to increase eVMT than the bottom 60 percent.

Background Information

PEVs are a class of vehicles with internal batteries that are charged from external electricity. PEVs include both battery electric vehicles (BEV), such as the Tesla Model S®, and plug-in hybrid vehicles, such as the Chevrolet Volt®. BEVs run only on battery power, whereas plug-in hybrids have both an electric motor and gasoline engine. Most BEVs have ranges that exceed 100 miles on a single full charge. Plug-in hybrids have smaller batteries with a limited all-electric range (the distance they can travel on electric power) and switch to gasoline once electricity reserves are exhausted.

PEVs have fewer adverse environmental impacts than gasoline powered vehicles. Gasoline use in passenger vehicles is a significant contributor to GHG emissions, accounting for nearly 35 percent of all GHG emitted in the SCAG region in 2010 (Strait et al 2012). Gasoline combustion emits carbon dioxide, a GHG that traps heat in the atmosphere and is the main contributor to anthropogenic climate change. The effects of climate change are expected to inflict serious consequences on Los Angeles County including increased high-heat days, increased water scarcity, extreme weather, and sea level rise (Los Angeles County Department of Public Health 2014).

In addition to carbon dioxide, gasoline combustion also emits hydrocarbons, nitric oxides, and particulate matter. These local air pollutants harm human health and cause illness and early death, contribute to unsightly smog, and degrade the local environment (University of California, Los Angeles Institute of the Environment and Sustainability 2015). Despite significant progress made on curtailing local air pollutants, Los Angeles County still regularly exceeds national air quality standards and remains in the top five polluted counties in the country.

In California, PEVs operating on electric power produce on average 60%-75% less GHG than gasoline vehicles per mile traveled (California Plug-In Electric Vehicle Collaborative 2010). In addition to GHG reduction, electric vehicles emit 97% less hydrocarbons and carbon monoxide (Argueta 2010). Electric vehicles operating in California are clean in comparison to gasoline vehicles because local electricity is generated by low-carbon and renewable sources (California Plug-In Electric Vehicle Collaborative 2010).

The PEV Market

California's PEV market accounts for half of all PEV sales in the United States and is projected to expand as the prices of PEVs decrease (Fitzgerald et al 2016). The cost of the battery, which can be as much as one third of total vehicle costs, is projected to drop over time (Harrington et al 2016; California Plug-In Electric Vehicle Collaborative 2010; McKinsey & Company. 2017; Gaines, Cuenca 2000). Moreover, increased production levels, technology development, and improvements in manufacturing efficiency are expected to further bring down the cost to manufacture PEVs, making them cheaper and more appealing to customers (California Electric Vehicle Collaborative 2010).

As the price for PEVs drops, sales are expected to increase. However, charger supply has historically failed to keep up with demand, leading to an undersupply of charging stations even as the number of PEVs on the road continues to grow (Patterson 2015). SCAG aims to supplement current incentive programs done through utilities to provide more charging station support in Los Angeles County.

The Market for BEV and PEV Charging Stations

Current incentive programs for electric vehicle charging stations are primarily administered through private and public utility rebate programs. Local utilities offer rebates to both residential and commercial customers that install electric charging infrastructure. These benefits are not targeted and can be claimed by any customer within the utility service area (Alternative Fuels Data Center 2016). The scarcity of workplace charging can lead to tension between employees and range anxiety, or the fear of running out of electricity when driving a BEV (Tully 2015; Ritchel 2015; Quirk 2015). While private investment should be encouraged, public investment is critical to address the failure by the market to supply adequate charging infrastructure (Alternative Fuels Data Center 2016).

Studies show that potential vehicle buyers do not choose BEVs if they are not assured constant access to compatible charging stations (Bonges 2016). Their fear of exhausting their

batteries' charge means that better support infrastructure, including workplace charging, could help potential vehicle buyers to overcome purchase barriers, such as range anxiety (Neubauer 2015; Knutsen, Willén 2013). It appears, however, that the effect of increased sales applies to PEVs, too.

Researchers from Cornell University found indirect network effects between the deployment of charging stations and the adoption of PEVs (Li et al 2016). Indirect network effects suggest that an increase in charging stations will increase the sales of PEVs. Their study suggests that a "10 percent increase in the number of charging stations per million inhabitants will result in 8 percent increase in electric car market share within a given city" (Li et al 2016, 3). Therefore, more charging infrastructure should be deployed to support future growth in the PEV market (Melaina, Helwig 2014).

PEV Charging at the Workplace

After home-based charging, workplaces are the second most important location for charging infrastructure deployment (Melaina, Helwig 2014). It is particularly important for plug-in hybrids which have limited electric range (Tal et al 2014). Workplace charging could increase eVMT as PEV owners indicated a strong willingness to use workplace charging, whether it be free or priced (Melaina, Helwig 2014). The potential of workplace charging is reinforced by both the likelihood of increasing PEV adoption and management support for workplace charging station installations (Melaina, Helwig 2014).

To date, studies examining an optimal relationship between the number of charging stations and PEVs report a wide range of potential ratios. The International Energy Agency estimates a charging points to PEV ratio range between 0.08 and 0.3 (Clean Energy Ministerial et al 2013). Research conducted by Roland Berger suggests that a charging points to PEV ratio of 0.01 (one public station per 100 PEVs) would greatly alleviate the range anxiety of PEV owners (Roland Berger Strategy Consultants 2010). The report "California Statewide Plug-in Electric Vehicle Infrastructure Assessment" published by the National Renewable Energy Laboratory reports a varying PEV ratio depending on the percentage of home-based charging.

However, because consumer perception and other factors make it difficult to identify an exact ratio, no consensus has yet emerged from the literature (Todd 2013).

Alternative Charging Locations

We repurpose transportation analysis zones (referred to simply as zones in this report) from the Southern California Association of Governments (SCAG) Travel Demand Model (TDM) as both our unit of analysis in our methodology and as our alternatives for investment. Zones are selected because the TDM commute forecasts are reported at the zone level and cannot be further disaggregated. To be a truly useful and actionable planning tool, our recommendations for where to prioritize workplace charging are provided at the highest possible spatial resolution given available data. Detailed spatial information allows for closer identification of specific workplaces where charging station investments will be the most effective. The results of our analysis lose impact when scaled up to larger political geographies such as cities or SCAG sub-regions.

To determine which locations in Los Angeles County should be prioritized for workplace charging station investment funding, we assess each location's potential to yield public benefits from additional charging infrastructure installations. This analysis requires spatial data including the locations between which PEVs commuters are driving and where charging stations are currently located. We calculate the number of PEVs commuting to each zone using PEV registration data and commute data predicted by SCAG's TDM. Information about the number of existing charging points is obtained from PlugShare, a charging station locator software.

For example, one zone identified as presenting a significant opportunity for investment is located south of Wilshire Boulevard in the Westwood neighborhood of Los Angeles. The area has several high-rise office buildings and a stretch of commercial properties, creating high draws for daily commutes. Furthermore, the nearby affluent neighborhoods from which the majority of commuters are expected to originate have large numbers of registered PEVs.

Our model predicts that a total of 376 daily PEV commute trips will terminate in the Westwood zone, yet only five electric vehicle chargers currently serve the location. Of those

376 PEV trips, 177 are plug-in hybrids from which additional electric mileage could be generated. With additional charging station investment, the zone has the potential to increase electric miles driven by commuters up to a cumulative 1,041 miles per day, the largest potential of any location within Los Angeles County.

In contrast to the Westwood zone, a lower priority investment zone will have less potential to increase commute miles traveled on electric power. For example, consider the zone located in Santa Fe Springs, east of the 605 freeway. This zone is dominated by light industrial and wholesale commercial areas, with a few low-rise office buildings. Commercial activity in this location draws significant numbers of daily commutes. However, unlike the Westwood location, residents in surrounding communities, which comprise most of the zone's commute pool, have purchased far fewer PEVs than the affluent neighborhoods surrounding Westwood. In total, 42 PEVs are expected to commute to the Santa Fe Springs zone, 23 of which are plug-in hybrids. Currently there are no charging stations available for PEV drivers.

Given additional charging stations, we expect that the unsupported plug-in hybrids in Santa Fe Springs could yield an additional 249 commute miles driven under electric power. This number is modest, much less than the Westwood location, but it still signals that the zone has potential for charging infrastructure investment. Furthermore, the Santa Fe Springs location is located in a disadvantaged community (DAC), affected by higher pollution levels and characterized by low incomes in nearby residential areas. Because this area would likely realize greater than average benefits from charging station investment, it warrants more attention and investment funds than similarly scoring zones not situated in a DAC.²

Key Criteria

To determine priority locations for PEV charging station investment, we evaluate each LA County zone – such as the two described above - by two criteria: 1) a potential for eVMT improvement criterion, and 2) an environmental justice criterion. These criteria are applied to

²Details concerning data and methodology are contained in the original report on which this chapter is based. The original report is available at <http://innovation.luskin.ucla.edu/content/prioritizing-workplace-electric-vehicle-charging-station-investments-los-angeles-county>.

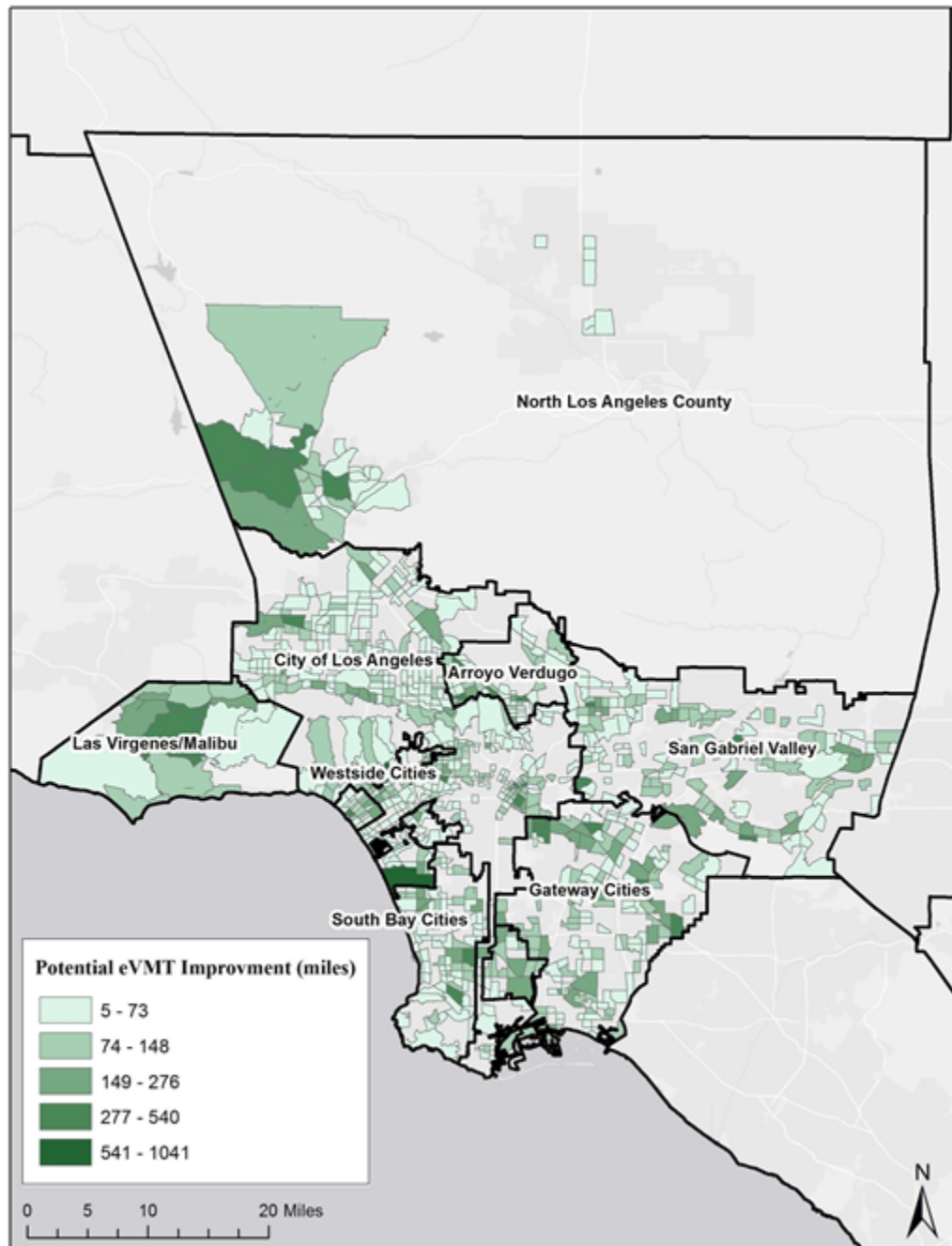
the zones in Los Angeles County sequentially. First, we ask, how much could these zones benefit from additional charging station infrastructure investment? We evaluate the benefit of investment based on the potential to increase the commute miles traveled under electric power (eVMT). Second, we ask, which zones are in locations that require additional support? We use an environmental justice criteria to identify zones in disadvantaged communities (DACs) that would benefit from additional support. We select these criteria as the most appropriate to judge investment priority. In the following sections of this chapter we explain the importance, methods, and calculation results for both criteria.

To identify how potential eVMT improvement varies across locations in Los Angeles County, we developed a mathematical model which combined data on commute trips with PEV registration data and existing charging station locations. The model produced an expected value for the number of additional miles that can be driven under electric power given full support for underutilized plug-in hybrid vehicles in each zone.³

We estimated that there are 5,861 plug-in hybrids that are used for commutes that exceed those vehicles' all-electric range. Such vehicles are underutilized resources, which when given the opportunity to charge at work, could yield as many as 75,858 additional electrically driven commute miles per day without requiring any new vehicle purchases. A higher number of potential eVMT improvement signals that a location is a good choice for securing public benefits from workplace charging infrastructure investments. Figure 1 maps the daily potential eVMT that can be generated in each zone. Potential eVMT improvements range from 5 to 1,041 eVMT per day.

³Ibid.

Figure 1. Daily Potential eVMT Improvement in Los Angeles County



Map Design by: James Di Filippo, Mahito Moriyama, Toru Terai, Kelly Trumbull, and Jiahui Zhang
Potential eVMT Improvement calculated using Data from SCAG's Travel Demand Model, PEV Vehicle Registration data from IHS Automotive, the United States Department of Energy's All-Electric Range data, and PlugShare Charging Station Location data.

Environmental Justice

Disadvantaged communities are disproportionately affected by pollution due to their location and demographic features. U.S. Environmental Protection Agency 2015). The near and long-term impacts of climate change are expected to fall more heavily on those same disadvantaged areas (U.S. EPA 2015). DACs often lack the necessary economic capital to directly invest in pollution mitigation (Kameri-Mbote et al 1996). Moreover, they may face barriers to equitable participation in environmental policymaking and receive fewer benefits from environmental programs (Kameri-Mbote et al 1996). Environmental justice aims to correct for the disproportionate impact pollution has on DACs. It seeks to involve residents of those communities in the environmental policymaking process, and ensure equitable distribution of the benefits of environmental programs (Kameri-Mbote et al 1996).

The environmental justice movement developed at the grassroots level in the late 20th century (Department of Energy 2017). More recently, environmental justice has become institutionalized in U.S. and California law. In 2012, California enacted Senate Bill 535 which mainstreamed environmental justice concerns into financing decisions concerning the distribution of proceeds from California's carbon market auctions (California Legislative Information 2012). The bill requires that 25 percent of all invested funds be allocated to projects that benefit residents of DACs and that at least 10 percent of available funds be invested directly into DACs (California Legislative Information 2012).

Senate Bill 535 has set legislative precedent for including environmental justice concerns in climate investment decisions. Notably, each of the electric vehicle infrastructure programs of the three California investor owned utilities have set targets for investment in DACs. In its decisions authorizing those programs, the California Public Utilities Commission cited Senate Bill 535 as the impetus for prioritizing investment in DACs (California Public Utilities Commission 2016). Given state and local policy to include environmental justice as an evaluative criterion, we provide recommendations below that are aimed at equitably allocating investment funding to those communities that most need the environmental benefits of electric vehicle charging infrastructure investments.

We utilized the CalEnviroScreen 2.0 tool data to identify which destination zones are located within DACs. The California Environmental Protection Agency (CalEPA) developed the CalEnviroScreen 2.0 tool for the purpose of identifying DACs as directed by Senate Bill 535. The tool uses an index which assigns a composite score to each California census tract by interacting population vulnerability characteristics with pollution exposure factors. Higher composite scores indicate greater disadvantage. CalEPA has designated census tracts in the top 25 percent of those composite scores as DACs. (California Public Utilities Commission 201An6; California Public Utilities Commission. 2016; San Diego Gas & Electric Company 2015).⁴

Zone Analysis

The nine zones in the highest priority tier for potential eVMT improvement are listed on Table 1. Of the nine zones in this tier, three are designated as DACs. Despite the wide range in existing charging points between zones, each of these DACs has a high number of PEV commute trips and high potential eVMT improvement.

Table 1. Tier 1 Zones

Zone Rank	City	Existing Charging Points	Plug-in Hybrid Commute Trips	PEV Commute Trips	Potential eVMT Improvement	DAC
1	Los Angeles	5	178	377	1,041	No
2	Los Angeles	9	149	317	985	No
3	Los Angeles	45	127	272	631	No
4	Los Angeles	18	87	172	625	No
5	Glendale	2	79	155	540	Yes
6	Commerce	4	47	91	509	Yes
7	Torrance	5	63	119	484	No
8	Santa Clarita	3	70	111	473	No
9	Monterey Park	0	44	88	445	Yes

⁴Ibid.

Much of the potential eVMT improvement in LA County is driven by a small number of zones. The zones in the highest tier represent only one percent of the total number of zones, but drive eight percent of the overall eVMT potential. Moreover, the top three tiers include only thirteen percent of the total zones, but can generate more eVMT improvement than the bottom 60 percent of zones combined. The high potential eVMT improvement scores in those small numbers of top investment zones allows SCAG to focus on very effective early investments which can rapidly increase the number of commute miles driven on electric power. Table 2 shows the number of zones in each tier and their eVMT improvement potential.

Table 2. Percent of Zones and Percent of eVMT Improvement

Priority Tier	Number of Zones	Zone Percent of Total	Potential eVMT	eVMT Percent of Total
Highest	9	1%	5,732	8%
High	28	3%	9,057	12%
Medium	85	9%	15,226	20%
Low	240	27%	23,173	31%
Lowest	543	60%	22,667	30%

Between one-third and one-half of each priority tier's zones are located in DACs. On average, DACs in priority tiers have 26 percent fewer currently installed charging stations than their non-DAC counterparts. This indicates that among DACs with similar charging needs as non-DACs, DACs have had far less charging infrastructure investment to date. Table 3 shows the number of DACs within each priority tier.

Table 3. The Number of Zones in Disadvantaged Communities

Priority Tier	Number of Zones	Number of DACs	Proportion DACs
Highest	9	3	33%
High	28	14	50%
Medium	85	36	42%
Low	240	99	41%
Lowest	543	171	31%

Setting Priorities

There are 905 zones in Los Angeles County that have the potential to benefit from public workplace charging station infrastructure investment. Our analysis reveals potential eVMT improvements vary widely across these zones. A significant portion of zones are located within DACs. These results inform our recommendations for zone investment priority and additional support for DAC zones.

A small number of zones in the top tiers contain a large percentage of Los Angeles County's eVMT generation potential. The concentration of eVMT potential in these top zones makes them clear infrastructure investment priorities. High priority zones are not geographically concentrated in any particular part of Los Angeles County. The wide geographic distribution of higher priority areas imposes difficulties on prioritizing based on administrative geographies. We therefore recommend a structured approach to investment which uses the five priority tiers as functional groupings of locations which require similar investment focus.

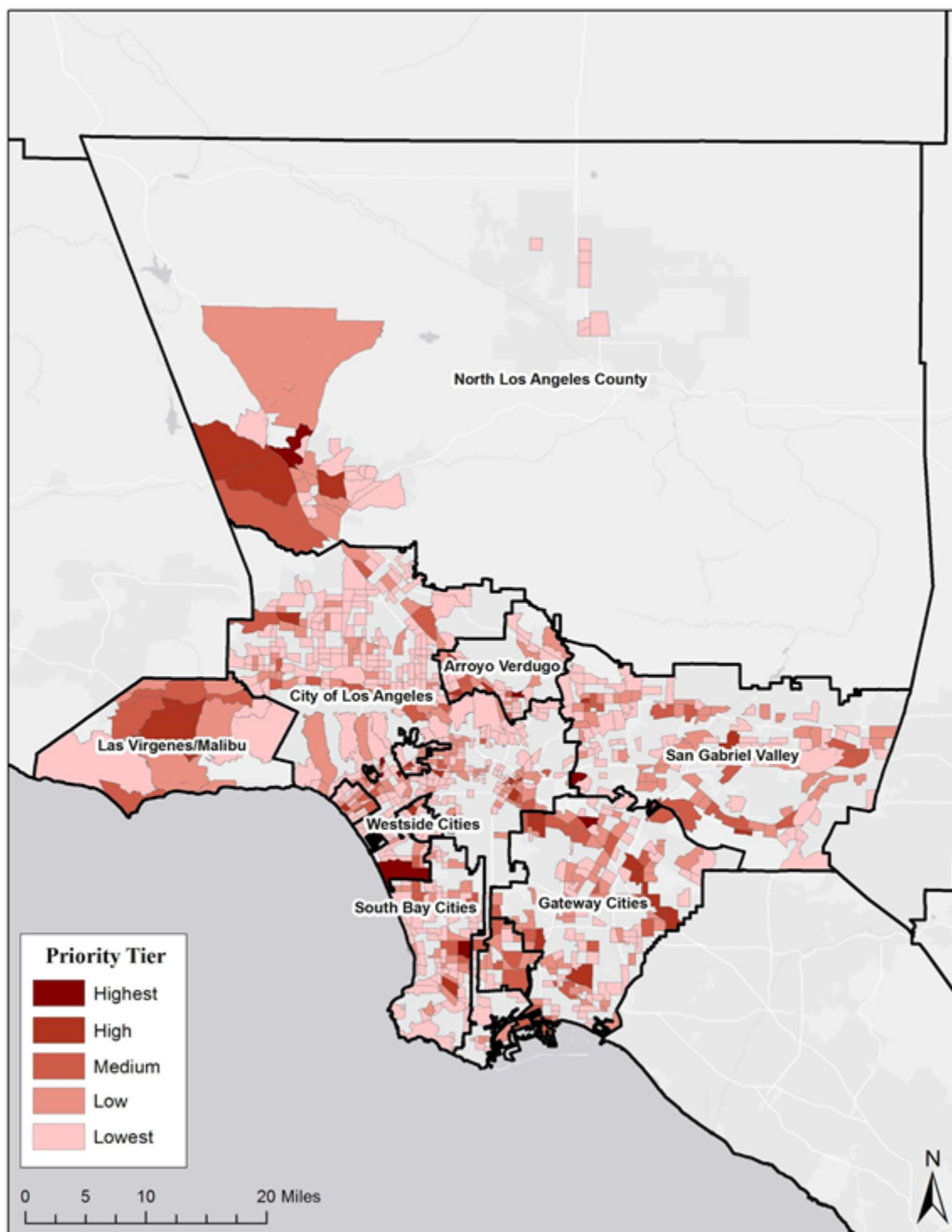
A substantial proportion of priority zones are located in disadvantaged communities. While the overall public benefits from investing in a DAC are similar to a non-DAC in the same tier, the DACs themselves may experience greater localized benefits from charging infrastructure investments. Furthermore, generally low investment levels in those communities could prove to be a barrier to infrastructure installation. Additional funding per charging station installation to DAC zones to ensure the benefits of the program are distributed equitably

among similarly prioritized zones. Table 4 shows both the total number of zones and the number of DAC zones in each tier. Figure 2 illustrates the locations of zones and their priority level on a map.

Table 4. Recommendations for Each Priority Tier in Los Angeles County

Priority Tiers	Number of Zones	Number of DACs
Highest	9	3
High	28	14
Medium	85	36
Low	240	99
Lowest	543	171

Figure 2. Priority Zones in Los Angeles County



Map Design by: James Di Filippo, Mahito Moriyama, Toru Terai, Kelly Trumbull, and Jiahui Zhang

There are two options for increasing commute eVMT: (1) increasing the share of miles traveled under electric power by existing plug-in electric vehicle commuters; and (2) encouraging conventional vehicle commuters to purchase PEVs. While our analysis addresses the first option, we lacked the data necessary to measure how the potential of vehicle charging infrastructure to spur further PEV deployment may vary from location to location within Los Angeles County. This data limitation constrains our ability to provide a complete picture of how charging infrastructure siting choices may influence eVMT in Los Angeles County. Regardless of limitation, our recommendation provides a tangible measurement of potential benefits on which to base investment decisions for funds that have already been allocated for the purposes of subsidizing electric vehicle charging infrastructure.

The available, but limited, evidence suggests that any investment in workplace charging infrastructure, regardless of location within Los Angeles County, will yield more PEV sales on average. While the exact mechanisms by which charging station availability increases demand for PEVs are unknown, we anticipate that charging station installations will have a higher likelihood of influencing buyers who are already somewhat likely to purchase a PEV. Therefore, in the near term, charging infrastructure investment will have the most effect on PEV purchases when it is sited in workplace locations where likely PEV purchasers are already employed.

In California, the factors that best predict propensity to purchase PEVs are previous nearby PEV sales and socioeconomic status indicators (UCLA Luskin Center for Innovation and South Bay Cities Council of Governments 2016). In the short term early PEV market stage, we assume those factors will hold true for predicting future PEV sales. The implication is that the persons most likely to purchase PEVs are residents in neighborhoods with already high PEV densities.

While we cannot precisely evaluate each location's specific potential to increase PEV adoption, we do expect that by limiting investment recommendations to zones with at least a minimal number of PEV trips, we increase the chance that the charging investments made will incentivize future sales. Furthermore, the scoring metric that we use to estimate potential to increase eVMT from plug-in hybrids increases with the number of PEVs commuting to that location. To the extent to which potential to increase PEV purchases scales with increasing

numbers of PEV commutes to a location, we expect that the plug-in hybrid eVMT improvement metric will prioritize investment in zones with more potential to increase PEV sales.

Our approach does not account for potential diminishing returns on investment as more chargers are installed in a specific zone. Therefore, simply installing enough chargers to support each plug-in hybrid deemed unsupported by our model may be inefficient. Furthermore, evidence on how many vehicles may charge per day on a single charger is limited and such charging behavior is likely influenced by individual workplace charging policies and pricing (New Energy Staffing & Recruiting Services 2013). As previously discussed, multiple studies and reports have attempted to determine an ideal ratio between vehicles and chargers; however, results have been mixed and no consensus has emerged from the literature.

The limitations in this report represent opportunities for future study. Growing PEV ownership rates will continue to be an important pathway to increasing the number of miles driven on electric power in Los Angeles County. Better understanding of how workplace specific characteristics may influence the efficacy of charging infrastructure to encourage PEV sales would be invaluable to planning processes. Furthermore, given the lack of consensus in the literature, future study about a reasonable ratio of charging stations to electric vehicles is warranted. Such information would be useful to infrastructure planners to identify investment targets.

Conclusions

There is a significant opportunity to increase commuting-related eVMT with strategically sited charging stations across Los Angeles County. If all 5,861 currently underserved plug-in hybrids in Los Angeles were able to charge fully for their return commute trip, Los Angeles County could replace 75,858 gasoline-powered commute miles. Much of the expected potential to increase commute miles driven on electric power is concentrated in a few top locations. Areas with high or very-high investment potential exist in various locations across Los Angeles County.

We grouped zones with similar investment potential into five tiers listed by priority and

suggest making investments in order of tier priority, beginning with the highest ranked tiers and moving to less productive tiers as time and budget allows. Additional funding should be directed to zones in disadvantaged zones ensure equitable distribution of benefits among similarly prioritized zones. As more PEVs are deployed in California, continued charging infrastructure investment will become increasingly important to further the environmental benefits associated with increased EV use.

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CHAPTER 8

Bail Reform in California

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In December 2016, California State Assemblymember Rob Bonta and State Senator Bob Hertzberg introduced the California Money Bail Reform Act of 2017, two bills intended to reform the state's commercial surety bail system.¹ In this chapter, we refer primarily to Senate Bill 10, because it was approved by the Senate by 46 to 11 (3 not voting). Assembly Bill 42 did not pass in the Assembly, failing by 35 to 37 (8 not voting).² It is likely that SB 10 will be amended and considered in 2018, since both the governor and the chief justice of the California Supreme Court have expressed support for bail reform.

Below we present a policy analysis comparing the current bail system to the alternatives proposed in the legislation. We describe the status-quo commercial surety bail system and then analyze its strengths and weaknesses. Then we outline the key aspects of the proposed legislation and evaluate how this alternative policy compares to the existing system. We conclude by recommending that the State of California reform the current commercial surety bail system along the lines proposed in SB 10.³

Background

California currently uses a system of commercial surety bail to regulate pretrial release for defendants. To understand this system, let's outline what happens to a hypothetical

¹"California's Bail System Punishes Poor People for Being Poor" (Press Release, California Assemblymember Bonta's Office, 2016), <https://a18.asmdc.org/press-release/bonta-demands-bail-reform>.

²Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

³ This chapter is based on the authors' Applied Policy Project. The original report was prepared at the direction of the Department and of our client, California Assemblymember Rob Bonta. The views expressed herein are those of the authors and not necessarily of the Department, the UCLA Luskin School of Public Affairs, UCLA as a whole, or the client. The authors sincerely thank their faculty advisor, Professor J.R. DeShazo for his invaluable support and guidance and Assemblymember Rob Bonta and his staff for making this project possible. The original report is at: https://static.prisonpolicy.org/scans/Bail_Reform_California.pdf [<https://perma.cc/UC8J-2MQU>].

defendant charged with felony assault with a firearm.⁴ After this defendant is booked into county jail, the bail system comes into play.⁵ A booking agent assigns a monetary bail amount to the defendant, based on the severity of the charge and a few other relevant factors.⁶ Then the defendant has three options:

1. Pay the full bail amount to the court to be released pretrial.⁷
2. Contract with a bail bonds agency and pay ten percent of the bail amount to be released pretrial.⁸
3. Pay nothing and remain in custody at the county jail, waiting for his or her first court appearance.⁹

Under the first option, the defendant pays the entire bail amount to the court.¹⁰ The hypothetical defendant charged with felony assault with a firearm would be required to pay \$50,000 in Los Angeles County, or \$125,000 in San Francisco County, to be released from jail, promising to appear at the next court hearing.¹¹ As long as the defendant appears at all court dates, the bail payment made to the court is ultimately refunded to the defendant, regardless of the outcome of the case.¹²

⁴Cal. Penal Code § 245(a)(2) (West 2017).

⁵Cal. Penal Code § 1269b(a)-(b) (West 2017).

⁶Ibid.

⁷Cal. Penal Code § 1279 (West 2017).

⁸Cal. Penal Code § 1276, 1278, 1287 (West 2017).

⁹“What Should I Know if I Am Arrested?” (Public Pamphlet, the State Bar of California, 2016), <http://www.calbar.ca.gov/Public/Pamphlets/Arrested.aspx>.

¹⁰Cal. Penal Code § 1279 (West 2017).

¹¹“Felony Bail Schedule” (Public Document, Superior Court of California County Los Angeles, 2017), <https://www.lacourt.org/division/criminal/pdf/felony.pdf>; “Felony Misdemeanor Bail Schedule” (Public Document, Superior Court of San Francisco, 2016), <http://www.sfsuperiorcourt.org/sites/default/files/images/2016%20Bail%20Schedule.pdf>; “Butte County Uniform Bail and Penalty Schedules” (Public Document, Superior Court of Butte County, 2017), <http://www.buttecourt.ca.gov/FeeSchedule/docs/2017%20Butte%20County%20Uniform%20Bail%20and%20Penalty%20Schedules.pdf>.

¹²Cal. Penal Code § 1269 (West 2017).

Defendants who cannot afford the full bail amount can instead contract with a bail bonds agency.¹³ This agency acts as an insurer, guaranteeing that defendants will appear at future court dates.¹⁴ Defendants who contract with a bail agency agree to pay a fee, generally ten percent of the bail amount.¹⁵ In the example above, the hypothetical defendant would be required to pay \$5,000 in Los Angeles County, or \$12,500 in San Francisco County, to the bail bonds agency.¹⁶ *This fee is nonrefundable, regardless of case outcome.*¹⁷ Even if the defendant was wrongly charged, he or she will not be refunded the ten percent fee paid to the bail bonds agency.¹⁸ The fee is, in effect, compensation to the bail bonds agency for taking the risk that the defendant won't appear in court. If the defendant does not appear, the bail bonds agency forfeits the full bail amount to the court and, in turn, the defendant then owes the full bail amount to the bail bonds agency.

If the defendant cannot afford either of the previous options, he/she will remain in custody at the jail. While defendants await trial in jail custody, they are unable to attend to their obligations, such as working, going to school, paying rent, or caring for family members.¹⁹

¹³ Cal. Code Regs. tit. 10, § 205.3 (2017).

¹⁴ Cal. Ins. Code § 1800.4 (West 2017).

¹⁵ Cal. Code Regs. tit. 10, § 2081 (2017).

¹⁶ "Felony Bail Schedule" (Public Document, Superior Court of California County Los Angeles, 2017), <https://www.lacourt.org/division/criminal/pdf/felony.pdf>; "Felony and Misdemeanor Schedule" (Public Document, Superior Court of San Francisco, 2016), <http://www.sfsuperiorcourt.org/sites/default/files/images/2016%20Bail%20Schedule.pdf>; "Butte County Uniform Bail and Penalty Schedules" (Public Document, Superior Court of Butte County, 2017), <http://www.buttecourt.ca.gov/FeeSchedule/docs/2017%20Butte%20County%20Uniform%20Bail%20and%20Penalty%20Schedules.pdf>.

¹⁷ Margaret Dooley-Sammuli, "Money Bail: Freedom and Justice Out of Reach for Far Too Many Californians," *San Diego ACLU* (blog), December 5, 2016, <https://medium.com/@SDACLU/california-bail-reform-f27a4b8de518#.3d4385zih>.

¹⁸ Alex Emslie, "Class Action Suit Against San Francisco Seeks to End Use of Cash Bail System," *KQED News* (Northern California, CA), October 29, 2015.

¹⁹ Nick Pinto, "The Bail Trap," *New York Times* (New York City, NY), August 13, 2015, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html?_r=0.

This is the status quo system that California State Senator Bob Hertzberg and Assemblymember Bonta intended to reform with SB 10 and AB 42.²⁰

Policy Problem & Significance

Note that the commercial surety bail system can be argued to perpetuate injustice by potentially allowing dangerous, wealthy defendants to go free while low-risk, poor defendants remain behind bars. These injustices become increasingly clear when comparing the stories of Robert Durst and Sandra Bland. Robert Durst was a billionaire who was arrested in connection with the murder of his neighbor in Texas.²¹ He could easily afford his \$250,000 bail, so he paid it and was released from jail.²² He then fled the state to avoid being convicted of a crime.²³

On the other hand, Sandra Bland was a young, black woman who was pulled over for failing to use her turn signal. The situation with the Texas State Trooper escalated quickly, and Bland was arrested for assault on a public servant.²⁴ Bland spent three days in jail because she was unable to pay \$500 in bail. Her story ended tragically when she committed suicide, allegedly because of her inability to afford bail.²⁵

²⁰“California’s Bail System Punishes Poor People for Being Poor” (Press Release, California Assemblymember Bonta’s Office, 2016), <https://a18.asmdc.org/press-release/bonta-demands-bail-reform>.

²¹Charles V. Bagli & Kevin Flynn, “Durst Jumps Bail, and a Nationwide Dragnet Is On,” *The New York Times*, (New York City, NY), October 17, 2001, <http://www.nytimes.com/2001/10/17/nyregion/durst-jumps-bail-and-a-nationwide-dragnet-is-on.html>; Gavin Newsom, (Speech, Bail Reform Press Conference, Sacramento, CA, December 5, 2016).

²²Polly Mosendz, “Robert Durst’s History of Skipping Bail Comes Back to Haunt Him,” *Newsweek*, March 23, 2015, <http://www.newsweek.com/robert-durst-jinx-denied-bail-316108>.

²³Charles V. Bagli & Kevin Flynn, “Durst Jumps Bail, and a Nationwide Dragnet Is On,” *The New York Times*, (New York City, NY), October 17, 2001, <http://www.nytimes.com/2001/10/17/nyregion/durst-jumps-bail-and-a-nationwide-dragnet-is-on.html>.

²⁴Ibid.

²⁵Associated Press, “Texas Officials say Sandra Bland, Who Died in Jail, Was Despondent Over Not Making Bail,” *Los Angeles Times*, (Los Angeles, California), November 13, 2015. <http://www.latimes.com/nation/nationnow/la-na->

Disparities such as these play out every day across California. The state operates 123 jails with a combined average daily population of over 72,500 inmates.²⁶ Between 60 and 70 percent of these inmates are unsentenced, including pretrial defendants.²⁷ To demonstrate the shortcomings of the commercial surety bail system, we highlight five issues below: economic bias, racial bias, public safety, fiscal impact, and social cost.

Commercial Surety Bail Analysis: Economic Bias

Bail bonds agencies are commercial, private businesses and are therefore motivated primarily by profits. Their goal is to bail out defendants who can pay the non-refundable fee.²⁸ This non-refundable fee can have drastic financial consequences for low-income and indigent defendants. It is not waived or refunded even if the defendant is found not guilty or if the charges are dismissed.²⁹ Many defendants cannot afford to pay their way out of jail pretrial and instead remain incarcerated, despite the fact that they have not been convicted of any crime. Furthermore, median bail amounts in California are more than five times greater than in the rest of the country (\$50,000 in California; less than \$10,000 elsewhere).³⁰ Across the country,

[nn-sandra-bland-lawsuit-20151113-story.html](http://www.sandracbland.com/2015/11/13/sandra-bland-lawsuit-20151113-story.html); Nick Wing, "Our Bail System is Leaving Innocent to Die in Jail Because They're Poor," *The Huffington Post*, February 23, 2017, http://www.huffingtonpost.com/entry/cash-bail-jail-deaths_us_57851f50e4b0e05f052381cb.

²⁶Magnus Lofstrom and Brandon Martin, "Just the Facts: California's County Jails" (Fact Sheet, Public Policy Institute of California, August 2016), http://www.ppic.org/main/publication_show.asp?i=1061.

²⁷Todd Minton and Zhen Zeng, "Jail Inmates at Midyear 2014" (Report, U.S. Department of Justice, Bureau of Justice Statistics, June 2015), 1, <https://www.bjs.gov/content/pub/pdf/jim14.pdf>.

²⁸Spike Bradford, "For Better or For Profit: How the bail bonding industry stands in the way of fair and effective pretrial justice," *Justice Policy Institute*, September 2012, http://www.justicepolicy.org/uploads/justicepolicy/documents/for_better_or_for_profit.pdf.

²⁹*Ibid.*

³⁰*Ibid.*

approximately 90 percent of defendants who are detained pretrial remain in jail because they cannot afford bail.³¹

Commercial Surety Bail Analysis: Racial Bias

People of color are disproportionately represented among the pretrial jail population.³² Between 2005 and 2013, African Americans made up six percent of the California population but 17 percent of arrests.³³ Similarly, during this time, Latinxs accounted for 37 percent of California's population but 42 percent of arrests.³⁴ Furthermore, research indicates that defendants of color "were less likely to be released pretrial than white defendants."³⁵ One study found that being black increased the probability of staying in jail pretrial by 25 percent.³⁶ Another study found that Hispanic defendants' probability of release was 55 percent, in contrast to white defendants, whose probability of release was 68 percent.³⁷

Race can also play a role in bail determinations. One study showed that bail amounts for black defendants are systematically higher than white defendants. Another study showed that

³¹Bernadette Rabuy and Daniel Kopf, "Detaining the Poor", *Prison Policy Initiative*, May 10, 2016; Cherise Fanno Burdeen, "The Dangerous Domino Effect of Not Making Bail", *The Atlantic*, April 12, 2016; Brian A. Reaves, "Felony Defendants in Large Urban Counties, 2009 – Statistical Tables", *Bureau of Justice Statistics*, December 2013.

³²"Overview," *State of California Department of Justice - OpenJustice*, accessed February 3, 2017, <https://openjustice.doj.ca.gov/arrests/overview>.

³³*Ibid.*

³⁴*Ibid.*

³⁵Tina L. Freiburger and Carly M. Hilinski, "The Impact of Race, Gender, and Age on the Pretrial Decision," *Criminal Justice Review* 35, no. 3 (2010): 320, <http://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1008&context=scjpeerpubs>.

³⁶Cynthia Jones, "'Give Us Free:' Addressing Racial Disparities in Bail Determinations," *Digital Commons @ American University Washington College of Law* (2013): 942, http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1304&context=facsch_lawrev.

³⁷Thomas H. Cohen, Brian A. Reaves, "Pretrial Release of Felony Defendants in State Courts," *Bureau of Justice Statistics Special Report* (November 2007): 6, <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.

average bail amounts for black and Hispanic males are 35 percent and 19 percent higher, respectively, than for white defendants —a statistically significant difference.³⁸

Commercial Surety Bail Analysis: Public Safety

Fifty-nine percent of arrestees in California are detained pretrial (they don't post bail), compared to just 32 percent in the rest of the country.³⁹ Despite detaining a greater percentage of pretrial defendants than other states, California has higher rates of felony re-arrest (12.4 percent versus 10.1 percent) and higher failure to appear rates (6.6 percent versus 2.9 percent) than the national averages.⁴⁰ This is a natural consequence of a system that releases defendants based on their ability to pay, rather than on their potential threat to public safety. Furthermore, studies show that low-risk defendants who are detained are actually more likely to recidivate later in life than low-risk defendants who are released.⁴¹ It is clear that California's current pretrial release system, which relies on detention and the commercial surety bail system, does not effectively protect public safety.

³⁸Ian Ayres and Joel Waldfogel, "A Market Test for Race Discrimination in Bail Setting," *Yale Law School Legal Scholarship Repository* (January 1994): 1010, http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2526&context=fss_papers.

³⁹Sonya Tafoya, "Pretrial Detention and Jail Capacity in California," (Report, Public Policy Institute of California, July 2015), http://www.ppic.org/main/publication_quick.asp?i=1154.

⁴⁰*Ibid.*

⁴¹Lowenkamp et al., "The Hidden Costs of Pretrial Detention (Report, Laura John Arnold Foundation, November, 2013), http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf;

Commercial Surety Bail Analysis: Fiscal Impact

The current commercial surety bail system uses taxpayer dollars to fund jail beds for thousands of unconvicted defendants.⁴² Our team conducted an in-depth cost analysis of this system and found that the current pretrial system costs California almost \$30 billion each year. This figure includes the cost of pretrial detention, estimated based on a 60 percent detention rate, and the cost of existing pretrial services agencies in California.⁴³

Commercial Surety Bail Analysis: Social Cost

Pretrial detention is associated with significant social costs to defendants and to society as a whole. For example, pretrial incarceration is linked to poor labor market outcomes for defendants who are incarcerated pretrial.⁴⁴ Detained defendants “are 5.1 percentage points [less] likely to be employed within two years of the bail hearing.”⁴⁵ Two more significant social costs of pretrial incarceration are the greater likelihood of being convicted, and the greater likelihood of receiving a harsher sentence.

Research indicates that defendants who are incarcerated pretrial are between 13 and 25 percent more likely to be convicted, and 25 percent more likely to plead guilty.⁴⁶ This result could be in part because defendants who are detained have limited access to their attorneys, and are unable to pursue opportunities which will help their case such as attending anger

⁴²Sonya Tafoya, “Pretrial Detention and Jail Capacity in California” (Report, Public Policy Institute of California, July 2015), http://www.ppic.org/main/publication_quick.asp?i=1154.

⁴³See Table 1 below.

⁴⁴Sonya Tafoya, “Pretrial Detention and Jail Capacity in California” (Report, Public Policy Institute of California, July 2015), http://www.ppic.org/main/publication_quick.asp?i=1154.

⁴⁵Ibid., 22.

⁴⁶Heaton et al., “The Downstream Consequences of Misdemeanor Pretrial Detention” (Univ. of Pa. Inst. for Law & Econ., Philadelphia, 2016), 21.

management and substance abuse programs, or maintaining employment or attending school. Detained defendants are at risk of losing their housing, their cars, their jobs, and even the custody of their children.⁴⁷ Meanwhile, they have not yet been convicted of any crime.

In summary, the commercial surety bail system is expensive, inequitable, and ineffective at maintaining public safety. For these reasons, a number of states have implemented bail reform. They have successfully abolished the broken bail system in favor of an alternate method of pretrial services and release options.

The Context for Reform

Bail reform in the United States began in earnest in the 1960s with the Manhattan Bail Project, which encouraged non-financial pretrial release from jail.⁴⁸ More recently, some states have replaced money-based systems with risk-based systems. Many counties and states have established pretrial services agencies that use tools to screen defendants before making pretrial release decisions.⁴⁹ Additionally, almost all states have adopted some form of non-financial release that is used in conjunction with bail.⁵⁰ A few states have abolished commercial surety bail altogether: Kentucky, Wisconsin, Illinois, and Oregon.⁵¹

⁴⁷Nick Pinto, "The Bail Trap," *New York Times* (New York City, NY), August 13, 2015, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html?_r=0.

⁴⁸"Pretrial Reform in Kentucky" (Pretrial Services, Administrative Office of Courts, Kentucky Court of Justice, 2013), 16, <https://www.pretrial.org/download/infostop/Pretrial%20Reform%20in%20Kentucky%20Implementation%20Guide%202013.pdf>.

⁴⁹Anne E. Marimow, "When it comes to pretrial release, few other jurisdictions do it DC's Way," *Washington Post*, July 4, 2016, https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html.

⁵⁰*Ibid.*

⁵¹*Ibid.*

Many states have implemented bail reform without increasing crime rates or failure to appear rates. Kentucky releases around 70 percent of pretrial defendants and, of those, 90 percent are not rearrested.⁵² Similarly, Washington, D.C. releases 90 percent of defendants, and D.C.'s pretrial services agency reports that about 90 percent of those released pretrial were not rearrested within five years.⁵³

California's reform bills are largely based on New Jersey legislation passed in 2014.⁵⁴ Since that legislation took effect in January 2017, New Jersey's jail population has decreased by 27 percent compared to the previous year, and less than ten percent of defendants are detained pretrial.⁵⁵ As in the case of the New Jersey law, the goal of SB 10-type reform is to "safely reduce the number of people detained pretrial, while addressing racial and economic disparities in the pretrial system, and to ensure that people are not held in pretrial detention simply because of their inability to afford money bail."⁵⁶

While statewide bail reform has not happened in California, 46 of the state's 58 counties have a pretrial services agency, and every county uses some form of non-financial release in conjunction with bail.⁵⁷ Some counties also use risk assessment tools.⁵⁸ The type of reform envisioned in SB 10 will expand on this progress by extending pretrial services to every county

⁵²Margaret Dooley-Sammuli (Criminal Justice and Drug Policy Director for ACLU of California) in discussion with the authors, February 2017.

⁵³Glenn A. Grant, "Criminal Justice Reform Annual Report to Legislature" (Report, New Jersey, 2015), https://www.judiciary.state.nj.us/criminal/cjr/Criminal_Justice_Reform_Report_to_the_Legislature_12_01_15.pdf.

⁵⁴Margaret Dooley-Sammuli (Criminal Justice and Drug Policy Director for ACLU of California) in discussion with the authors, February 2017. See Appendix F for interview questions.

⁵⁵"CDR2 Warrants Issued," New Jersey Courts, accessed on February 20, <http://www.judiciary.state.nj.us/criminal/cjr/cjrsummaryrpts.pdf>.

⁵⁶Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁵⁷"Pretrial Progress: A Survey of Pretrial Practices and Services in California," Community Resources for Justice, http://libcloud.s3.amazonaws.com/211/95/d/636/PretrialSurveyBrief_8.26.15v2.pdf

⁵⁸*Ibid.*

in California, mandating the use of risk assessment tools, and explicitly encouraging the use of non-financial release in lieu of commercial surety bail.

Tools for Reform

One of the keys to reforming bail in California is developing and adopting risk assessment tools. Risk assessment tools input variables that are proven to be statistically significant in predicting the probability of being rearrested and failing to appear into a predictive algorithm. The algorithm computes a risk score for a defendant.⁵⁹ Common variables include age at first arrest, criminal history, employment status, and the current charge.⁶⁰ Pretrial services agencies use risk assessment tools to predict the probability of failing to appear in court and a defendant's potential danger to the community.⁶¹ Using risk assessment tools, instead of assigning bail amounts to defendants when they are booked, has been essential in other states that have undertaken bail reform and would be similarly essential in California's reform process.

After a defendant's likelihood of being rearrested and failing to appear for court have been determined using a risk assessment tool, a judge can decide whether the defendant should be released pretrial or remain in jail. States that have reformed their bail systems have adopted a variety of pretrial release options from which judges can choose. For example, judges

⁵⁹Latessa et al. "Creation and Validation of the Ohio Risk Assessment System: Final Report" (Report, University of Cincinnati School of Criminal Justice Center for Criminal Justice Research, 2009), http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf.

⁶⁰Edward Latessa, "Creation and Validation of the Ohio Risk Assessment System: Final Report," (University of Cincinnati, Cincinnati, Ohio, 2009), Executive Summary ii, http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf.

⁶¹Marie VanNostrand and Kenneth J. Rose. "The Virginia Pretrial Risk Assessment Instrument" (Report, Luminosity Inc., 2009), 3, <http://www.pretrial.org/download/risk-assessment/VA%20Risk%20Report%202009.pdf>.

might select from the following pretrial release options, depending on the defendant's risk assessment score and the recommendation of the pretrial services agency:

1. Release on own recognizance: Defendants are simply released on their promise to appear at the next court hearing.⁶² This pretrial release method does not impose any conditions on defendants.
2. Supervised release: Defendants are released with supervision conditions based on the score they receive from a risk assessment tool.⁶³ Possible conditions of release could include regular check-ins by phone, electronic monitoring, drug testing, and more.⁶⁴ For example, SB 10 would require that defendants pay for their supervision only if they are able.⁶⁵
3. Unsecured bonds: Defendants are released on their promise to pay the full amount of their bond if they fail to appear for a court date, similar to a fine.⁶⁶ The bond amount is usually smaller than the amounts in bail schedules under the current commercial surety bail system.⁶⁷

Senate Bill 10's Proposed Reforms

Senate Bill 10 aims to reform bail in every county in California. It addresses the failings of the current commercial surety bail system that were established above: economic bias, racial bias, public safety, fiscal impact, and social cost. If reform is pursued in California, it would likely include elements similar to SB 10.

Economic Bias: Senate Bill 10 directly addresses the economic bias imposed by the current surety bail system. Currently, pretrial release is based on a defendant's wealth instead of his or

⁶²Example of OR Form from Riverside. "Agreement for Own Recognizance Release" (Superior Court of California, County of Riverside), <http://www.riverside.courts.ca.gov/localfrms/ri-cr013.pdf>.

⁶³The Board of Directors of the California Association of Pretrial Services, "Release Standards and Recommended Procedures," (California Association of Pretrial Services, California, 2007), 12, http://pretrialservicesca.org/public/css/CAPS_Standards_022807_Approved.pdf.

⁶⁴VanNostrand et al, "State of the science of Pretrial Release Recommendations and Supervision," (Report, Pretrial Justice Institute, 2011) 15-32, <http://luminosity-solutions.com/site/wp-content/uploads/2014/02/State-of-the-Science-Pretrial-Recommendations-and-Supervision-5.pdf>.

⁶⁵Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁶⁶"Pretrial Release Conditions," *National Conference of State Legislatures*, September 15, 2016, <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-conditions.aspx#/>.

⁶⁷Maureen Cain and Jud Lohnes, "Overview of Colorado's New Bond Statues (Colorado Criminal Defense Institute), http://www.ccdinstitute.org/wp-content/uploads/sites/23/2014/08/Overview_of_Colorado%E2%80%99s_New_Bond_Statues-1.pdf.

her risk to the community.⁶⁸ In contrast, SB 10 mandates that defendants would not be held in pretrial detention “simply because of their inability to afford money bail.”⁶⁹

In addition to preventing judges and magistrates from “set[ting] monetary bail in an amount that results in the pretrial detention of a defendant solely because of his or her inability to pay,” SB 10 also provides for alternative forms of pretrial release. These include own recognizance release, supervised release, and unsecured bonds.⁷⁰ Because release on own recognizance requires only “the defendant’s word that he or she will appear for a scheduled [court] matter,”⁷¹ it does not impose costs on the defendant.

Under supervised release, the defendant would be released with the least restrictive conditions to ensure that the defendant will not fail to appear or be rearrested pretrial.⁷² SB 10 provides that the judge could require the defendant to pay for supervision services such as electronic monitoring or drug testing, but the amount would be strictly based on the defendant’s ability to pay.⁷³

Lastly, an unsecured bond is “where money is promised to be paid if the defendant fails to appear for court, but money does not have to be paid to gain release from custody.”⁷⁴ While this release alternative could impose a monetary condition on defendants, an upfront nonrefundable fee is not required to be released from jail. These three alternatives, if enacted

⁶⁸ Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Black’s Law Dictionary*, ed. Bryan A. Garner (West Publishing Co., 1996), 638.

⁷² The Board of Directors of the California Association of Pretrial Services, “Release Standards and Recommended Procedures,” (California Association of Pretrial Services, California, 2007), 12.

⁷³ Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁷⁴ Schnacke et al., “The Jefferson County Bail Project: Lessons Learned from a Process of Pretrial Change at the Local Level,” (Report, Pretrial Justice Institute, June 2014).

in California, would erase the current reliance on upfront financial costs as a precondition for release from jail custody.

Racial Bias: Senate Bill 10 addresses the disproportionate representation of people of color among the detained pretrial population by prescribing the use of race-neutral risk assessment tools.⁷⁵ SB 10 prohibits risk assessment tools from including “race, ethnicity, national origin, immigration status,” and other proxies for race, such as employment status, socioeconomic status, arrests that did not lead to conviction, and housing status.⁷⁶ The legislation takes these steps in an effort to ensure that race and its proxies do not lead to a higher risk score for a defendant.

However, there are disagreements in the academic community about whether risk assessment tools can completely eradicate racial bias from the system. Two ProPublica studies found that the widely-used COMPAS risk assessment tool was twice as likely to misclassify black defendants as high risk than white defendants.⁷⁷ While this is an indication that some risk assessment tools can perpetuate racial biases, they have a greater potential to be improved than a system based on subjective and personal biases because they are based on predictive algorithms. The bill’s authors sought to reduce racial bias in the pretrial system by providing in

⁷⁵See the following articles for an in-depth discussion about race in risk assessment tools. Julia Angwin and Jeff Larson, “Bias in Criminal Risk Scores is Mathematically Inevitable, Researchers Say,” *ProPublica* (December 30, 2016), <https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say>; Angwin et al., “Machine Bias,” *ProPublica* (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

⁷⁶Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁷⁷Julia Angwin and Jeff Larson, “Bias in Criminal Risk Scores is Mathematically Inevitable, Researchers Say,” *ProPublica* (December 30, 2016), <https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say>; Angwin et al., “Machine Bias,” *ProPublica* (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

SB 10 that the tool would be monitored and adjusted regularly to ensure that it provided equal treatment across all racial and ethnic groups.⁷⁸

Public Safety: Because California detains more defendants pretrial yet realizes worse public safety outcomes than the rest of the country, it is clear that California is not accurately selecting which defendants to release pretrial. To counter this outcome, SB 10 outlines standards for risk assessment tools that each county would be required to follow to ensure that public safety is prioritized. The bill mandates that the tools are “objective, standardized, and developed based on analysis of empirical data and risk factors relevant to the risk of failure to appear in court...and risk to public safety.”⁷⁹ These restrictions are specified in the legislation so that low-risk individuals would not be detained unnecessarily and that higher-risk individuals would be given the proper conditions or detention so that public safety is not compromised.⁸⁰

Fiscal Impact: We estimate that the current bail system costs the state approximately \$30 billion each year. SB 10 aims to decrease these costs by detaining no more defendants than necessary. The legislation seeks to decrease the detainment rate by ensuring that defendants are not held because of their inability to pay and that defendants who are low-risk are released.⁸¹ These changes, if enacted, would lead to the detention of substantially fewer individuals in county jails and therefore reduce costs.

In fact, if the detainment rate were reduced from 60 percent to 40 percent, we estimate that the cost of the pretrial justice system would be reduced from \$30 billion to \$19 billion.

Further, if the detainment rate were reduced to ten percent, the cost would be further reduced

⁷⁸ Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁷⁹ Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

⁸⁰ Ibid.

⁸¹ Assemb. 42, 2017-2018 Leg., Reg. Sess. (Cal. 2016); S. 10, 2017-2018 Leg., Reg. Sess. (Cal. 2016).

to \$5 billion. Our sensitivity analysis in Table 1 indicates that pretrial incarceration is extremely expensive compared to the cost of pretrial supervision.⁸²

⁸²Source: https://static.prisonpolicy.org/scans/Bail_Reform_California.pdf [<https://perma.cc/UC8J-2MQU>].

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Table 1: Fiscal Impact Per Year (2014 dollars)

	Status Quo: Commercial Surety Bail (60% detained)	SB 10: Non-Bail Release Methods (40% detained)	SB 10: Non-Bail Release Methods (10% detained)
Number of Pretrial Defendants Detained in Jail Per Year	675,614	450,409	112,603
Average Yearly Cost of Incarceration	\$28.1 billion	\$18.7 billion	\$4.7 billion
Pretrial Services Staff Salary and Benefits	46 counties: <i>\$29.9 million</i>	58 counties: <i>\$52.4 million</i>	
Pretrial Services Agencies Supplies and Supervision Costs	46 counties: <i>\$18.2 million</i>	58 counties: <i>\$28.7 million</i>	<i>58 counties: \$43.1 million</i>
TOTAL	\$28.1 billion	\$18.9 billion	\$4.9 billion

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Social Cost: As mentioned above, pretrial detention is linked to significant social costs, such as poor labor market outcomes, negative case outcomes, and an increased likelihood of defendants losing their housing, cars, child custody, and more.⁸³ As with fiscal impact, the lower detention rate that SB 10 aims to achieve would lower the associated social costs.⁸⁴ We have

⁸³ Cites 40-44 from above.

⁸⁴ Id.

monetized the social costs associated with pretrial detention and compared the costs under the status quo with two possible scenarios under SB 10 in Table 2.⁸⁵

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Table 2: Social Costs Per Year (2014 Dollars)

	Status Quo: Commercial Surety Bail (60% detained)	SB 10: Non-Bail Release Methods (40% detained)	SB 10: Non-Bail Release Methods (10% detained)
Number of Pretrial Defendants Detained in Jail Per Year	675,614	450,409	112,603
Lost Wages	\$22.3 billion	\$14.9 billion	\$3.7 billion
Cost of Sexual Assaults on the Jail Population	\$7.0 billion (21,620 assaults)	\$4.7 billion (14,414 assaults)	\$1.2 billion (3,604 assaults)
Cost of Suicide Among the Jail Population	\$2.3 billion (112 suicides)	\$0.6 billion (75 suicides)	\$0.2 billion (19 suicides)
TOTAL	\$31.7 billion	\$20.2 billion	\$5.1 billion

Note: The monetized value of a sexual assault and the value of a human life used in this table are from McLaughlin et al., “The Economic Burden of Incarceration in the U.S.” (Report, St. Louis, MO, 2016), 8, <https://joinnia.com/wp-content/uploads/2017/02/The-Economic-Burden-of-Incarceration-in-the-US-2016.pdf>.

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The table shows that the status quo commercial surety bail system imposes approximately \$32 billion in social costs each year. By decreasing the detention rate, SB 10-type

⁸⁵Source: Pranita Amatya et. al., “Bail Reform in California,” https://static.prisonpolicy.org/scans/Bail_Reform_California.pdf [<https://perma.cc/UC8J-2MQU>].

reforms could decrease social costs by \$12-27 billion. Under the 40 percent detainment scenario, 7,206 sexual assaults and 37 suicides would be avoided compared to the status quo, which results in \$4 billion saved. In the ten percent detainment scenario, 18,016 sexual assaults and 93 suicides would be avoided, saving \$8 billion compared to the status quo.⁸⁶ These cost savings reflect the improvement in the quality of life that would be experienced by defendants in California's judicial system.

Policy Recommendation

When comparing the status quo bail system to the system proposed under SB 10, it is clear that bail reform is necessary in California. By removing financial preconditions to pretrial release, the alternatives proposed would work to eliminate the economic bias so famously associated with the bail system. The use of pretrial risk assessments in California's 58 counties would improve public safety by basing eligibility for pretrial release on the defendant's risk of failing to appear and risk of recidivating rather than on socioeconomic status.

Reform would also reduce the fiscal burden on the counties and state by simultaneously reducing the pretrial jail population and increasing the use of pretrial supervision. Such supervision is much less expensive than jail beds. We estimate that the annual cost savings from this switch could equal anywhere from \$9.2 billion to \$23.3 billion.

Lastly, reforms of the type proposed in SB 10 would decrease the high social costs associated with a high pretrial incarceration rate. The reduction in the pretrial incarceration rate will result in improved labor market outcomes for defendants, along with a decrease in sexual assaults and suicides in jail custody. A decrease in the pretrial incarceration rate could

⁸⁶ Ibid.

result in a social cost savings of between \$11.5 billion and \$26.6 billion. Because of these substantial improvements that California could experience through the reforms outlined in this chapter, the state legislature should focus on, and enact, effective bail reform.

CHAPTER 9

The California Economic Outlook: Slow But Steady

Robert A. Kleinhenz and Christopher Thornberg

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Trying to forecast the California economic outlook is made difficult in part by the uncertainties emanating out of Washington, DC. Despite its size, California is tightly linked to national economic developments. While there is nothing visible that would suggest an actual economic downturn (recession), policy developments at the federal level could have potentially disruptive effects on California.

It is possible, for example, that Congress will enact some type of tax cut, but it is also possible there will be the kind of gridlock that (again, at this writing) prevented it from adopting wholesale changes in “Obamacare.” There will be new appointments to the Federal Reserve, including the chair of the Board of Governors, which could affect future monetary policy. World events could also have economic impacts ranging from crises related to North Korea or Iran to uncertainties over possible renegotiation of trade agreements, especially NAFTA.

Limits to California’s Economic Growth

As Figure 1 shows, for most of the post-recession era, the California economy has been among the fastest growing of the states, both in terms of job gains and growth in economic activity.² Credit for this growth trajectory has largely been attributed to the high-tech sector, which experienced phenomenal growth over that time. But it was also made possible by enormous slack in the labor market as the state recovered from the highest rates of unemployment seen in at least 40 years. For more than 60 months from early in 2012 through mid-2016, California added jobs at roughly double the rate of the United States as a whole. Job gains were impressive, at times exceeding 3% year-over-year, and the state gradually chipped away at its double-digit unemployment rate which fell from 12.2% in 2010 to 5.4% in 2016.

Yet, by the third quarter of 2016, that slack had been largely squeezed out. Instead of handily outpacing U.S. job gains, California’s job growth rate slipped to just above 1.5%, putting it roughly on par with the nation. By early 2017, slack in the labor force was wrung out as California saw its unemployment rate hit a 16-year low, as Figure 2 indicates. The state had effectively reached full employment. Job growth continued in most industries, but at a pace that was much slower than in prior years of the recovery. As California entered the final quarter of 2017, some observers worried that the slowdown in the labor market could be a precursor to a stalling statewide economy.

²Figures 1 and 2 are based on seasonally-adjusted data.

Figure 1

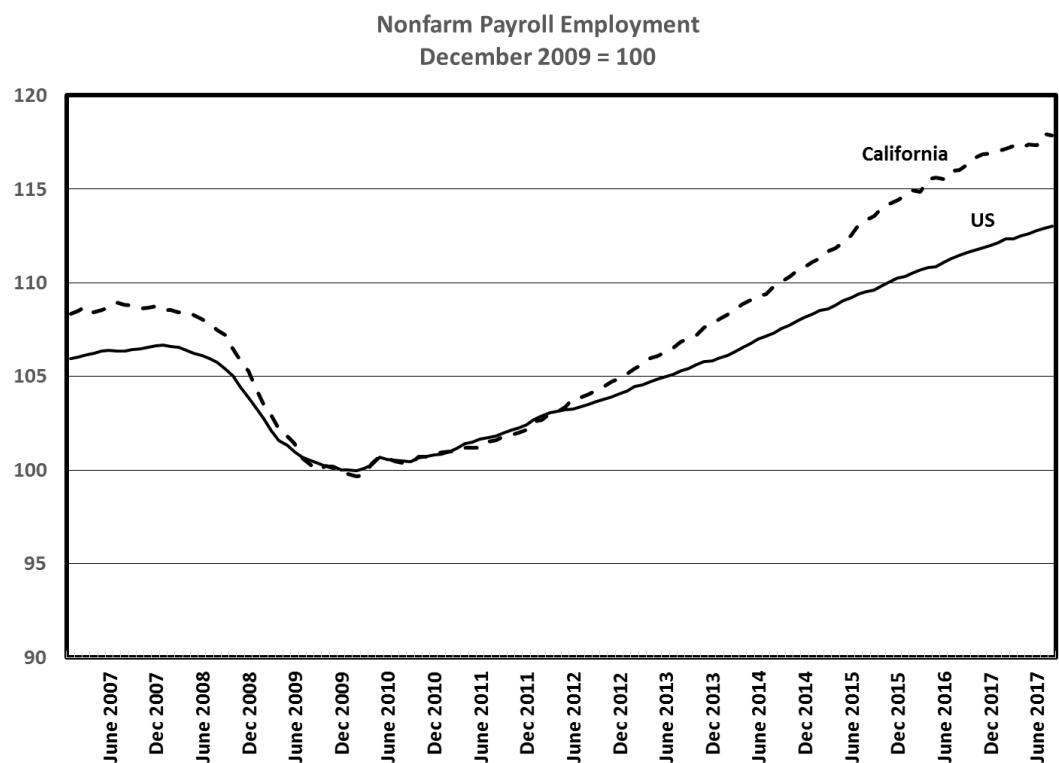
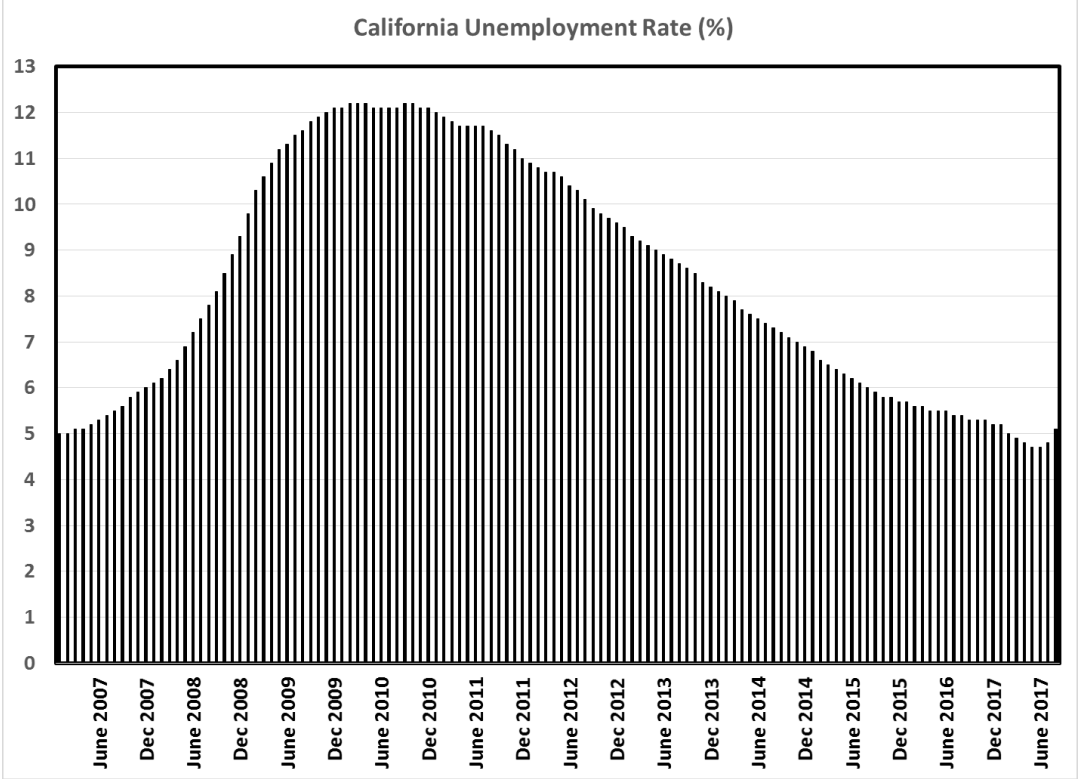


Figure 2



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Table 1**Jobs by Major Industry, California**

Industry	Aug-16	Aug-17	YTY	YTY %
Total Nonfarm	16,512,700	16,777,800	265,100	1.6%
Health Care & Social Assistance	2,190,500	2,253,600	63,100	2.9%
Construction	777,500	824,900	47,400	6.1%
Leisure & Hospitality	1,898,200	1,937,700	39,500	2.1%
Government	2,517,300	2,556,600	39,300	1.6%
Other Services	558,700	585,600	26,900	4.8%
Wholesale Trade	723,400	737,300	13,900	1.9%
Educational Services	355,600	367,900	12,300	3.5%
Administrative & Support & Waste Services	1,086,900	1,096,900	10,000	0.9%
Retail Trade	1,684,300	1,688,700	4,400	0.3%
Real Estate & Rental & Leasing	278,600	282,700	4,100	1.5%
Information	525,700	529,700	4,000	0.8%
Management of Companies & Enterprises	226,000	230,000	4,000	1.8%
Finance & Insurance	545,900	549,100	3,200	0.6%
Transportation, Warehousing & Utilities	590,200	592,200	2,000	0.3%
Mining and Logging	23,900	22,800	-1,100	-4.6%
Manufacturing	1,302,900	1,300,100	-2,800	-0.2%
Professional, Scientific & Technical Services	1,227,100	1,222,000	-5,100	-0.4%

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Not so fast!

The fear of stalling, however, is based on a misdiagnosis. Yes, California's pace of job growth has slowed considerably. But the slowdown is not because the expansion is petering out. In fact, the state continued to add jobs through the first several months of 2017, only at a slower rate than earlier. Wage and salary nonfarm employment rose by 265,100 jobs year-to-year in August, 2017, a 1.6% increase that was considerably lower than the 2.3% gain of August 2016. (See Table 1.) In the private sector, Health Care made the largest contribution, followed by Construction, and Leisure and Hospitality. Professional, Scientific, and Technical Services, the source of so much job growth in recent years, experienced the largest absolute loss of jobs, though it translated into only a slight decrease in percentage terms. On the other hand, Government sector job growth was substantial, mostly at the local level.

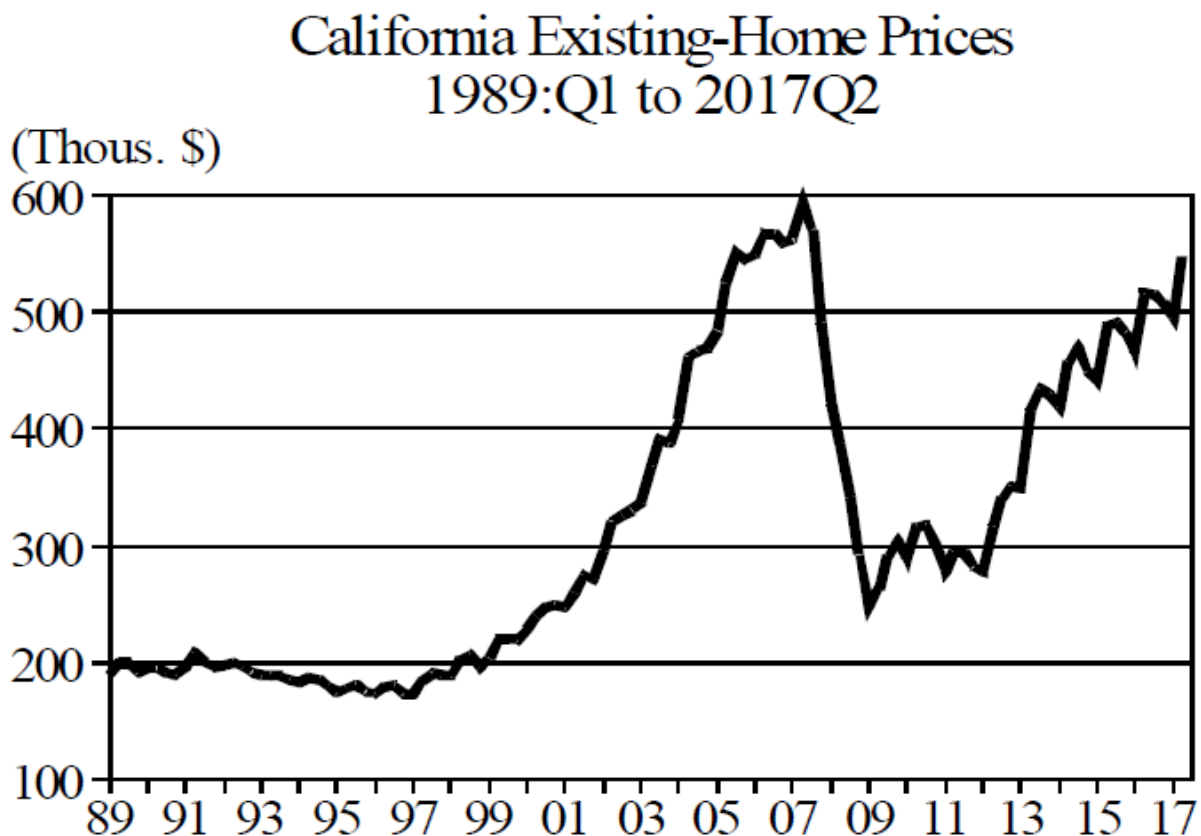
Labor Market Constraints: With the labor market's capacity to supply more workers now limited, a slower pace of job growth was to be expected. In turn, there was a similar decrease in overall economic growth with California's gross state product edging up by one-tenth of a percent from the first quarter of 2016 to the same quarter in 2017. Taxable sales growth also

slowed considerably, advancing by just 2.7% year-to-year in the first quarter of 2017 compared to a 6.7% increase in the final quarter of 2016.

With California at full employment, job growth and general economic gains will largely be constrained in the future by the availability of workers to fill available jobs. This constraint should eventually mean higher wages for workers, which would be a welcome development from the employee viewpoint. But it could be a problem for firms that are expanding and find it more costly to fill open positions.

The state's labor force grew by less than one percent throughout 2017, and the state's labor force participation rate has stabilized at just over 62%. These numbers impose fairly strict "speed limits" on the supply of labor. There is one wild card: the labor force participation rate for younger individuals. Across several decades, this rate has been declining, but a reversal of this trend would introduce new capacity in the labor market.

Figure 3



Source: UCLA Anderson Forecast, September 2017. Data from California Association of Realtors

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On the demand side of the labor market, national data show that job openings have reached record highs. Large number of positions are going unfilled, presumably because of a lack of qualified job applicants. This condition holds true for most industries, from Professional and Business Services to Manufacturing to Food and Beverage establishments. In turn, there are shortages of skilled workers in well-paying occupations, of unskilled workers in food services and similar industries, and even of skilled and semi-skilled occupations in Manufacturing and Construction. Comparable data for California are not readily available, but the situation in the state very likely parallels the national trend.

Housing affordability: Housing affordability concerns are ever-present in California and become more problematic when the economy is expanding. While not at an all-time low, housing affordability has edged down in recent years as home prices have risen, as Figure 3 suggests. Median home prices are moving toward levels seen at the peak of the housing boom that ended with the Great Recession. But homeownership, which slid from nearly 60% prior to the Great Recession to 53% in the second quarter of 2016, finally reversed direction and climbed to 55% in early 2017.

Stress in the owner-occupied market has spilled into the rental market, contributing to low vacancy rates and upward pressure on rents across much of the state. Affordability problems hit low- and middle-income households hardest, and as a result, these households have left the state in larger numbers than households with higher incomes. Arguably, housing affordability challenges are a second limit to job growth in the state, and likely exacerbate the job mismatch problem mentioned earlier.

With the high cost of housing, the ability of the state to attract scarce labor from outside California is limited. Politicians have reacted with various state and local housing programs aimed at encouraging or subsidizing “affordable” housing. Yet even added together, these programs can have only a limited impact on total housing supply.

Uncertain outlook: While, as noted, the notion that uncertainty can lead to economic inaction makes sense, it is not so easy to find hard evidence to confirm such a connection. Still, it stands to reason that firms must make plans regarding future sales, capital expenditures, and hiring. But they will sit on their hands – or at best move slowly – if their outlook for the future is sufficiently cloudy.

Federal policies regarding trade, immigration, health care, and taxes are akin to the “rules of the road” for businesses and employers. Given that those rules may change under the current administration in Washington, there is every incentive for firms to wait and see what will transpire. To the extent that this includes hiring decisions, we have yet a third limit to job growth. There might have been even more stress in the labor market had the policy outlook been clearer. Given the uncertain outlook, and barring some unforeseen shock, the likely outcome is for continued modest growth at the national and state levels.

Overcoming Limits to Growth

There are ways to ease these limits to growth. California relies on immigrants as a key component of its labor force, as does the nation as a whole. If national leaders can finally come together on an immigration policy that acknowledges the essential role of immigrants in the economy, California could ease its labor force constraint and add to its workforce.

Addressing the problem of housing affordability could slow state-to-state outmigration from California. It is no coincidence that in growth in the California labor force slowed as the cost of living soared in the state thanks to housing. As recently as the mid-1970s, the median price of a California home was just a few thousand dollars higher than the national median. But since 1990, the California median has consistently exceeded the U.S. median by more than 50%, with the state median at least double the U.S. median in 10 of the last 27 years. Meanwhile, rents have reached such highs that many communities across the state have been singled out for rent burdens that are among the nation’s highest.

It all comes down to demand and supply in the housing market. On the demand side, the much-anticipated arrival of millennials on the housing scene, coupled with recent job and income growth and low interest rates, are all driving demand for housing, both owner-occupied and rental housing. On the supply side, existing home sales have fallen below expectations, given the strength of the economy, while new single-family and multi-family construction has been relatively weak since the Great Recession.

Demand-side solutions to the problem include easier underwriting standards for mortgages (though not as slack as the loose rules of the early 2000s that led to the housing/mortgage

bust). There could be reduced down payments, special finance programs for would-be buyers, and rent subsidies for qualified households. But in the absence of increased supply, these programs result in more would-be buyers/renters competing for scarce housing. Ultimately, the situation must be addressed by increasing supply, a tall order indeed, given political resistance to relaxed zoning standards and increased population density. But until the supply side of public policy is addressed in California, growth of the statewide economy will be constrained.

The Outlook

Although constrained by the labor market and housing, California will continue to grow over the next several quarters. Growth in economic activity and jobs will occur across the regions of the state throughout 2018. Most of the job gains will likely occur in Health Care, Leisure and Hospitality, and Construction.

Continued uncertainty arising from Washington turmoil and conflict represents a potential negative factor. The public sector in California – especially at the state level – is particularly vulnerable to economic perturbations produced from that turmoil or from other causes. But the state will fall short of its potential until it crafts long-term solutions to the chronic problem of high housing costs and low housing affordability.

Chapter 10

Conducting Public Business in Private: Electronic Communications and the California Public Records Act

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Introduction

“This case concerns how laws, originally designed to cover paper documents, apply to evolving methods of electronic communication.”

City of San Jose v. The Superior Court of Santa Clara County (2017)¹

Even before the 2016 U.S. presidential election, electronic communications and applications dominated the headlines and have since remained the focus of the nation’s attention. More often, they have become the news – real or fake. And, while more recent – but already commonplace – applications of electronic communication such as Facebook, Twitter and texting may take center stage, always looming in the background – and continually coming to the fore – is the less glamorous, the long enduring electronic mail, or e-mail.

Already decades old, e-mail has established and maintained itself as a common currency of daily communication, both publicly and privately, for business and non-business use. E-mail, minus all the technical jargon, is still the transmission information over a wire (think 1800s telegraph and development of the telephone) or wireless via electromagnetic waves (radio development in the 19th and 20th centuries which is still very much in use). But the unprecedented extent and scale of use as an everyday mass medium of communication via the Internet may have not so clearly been envisioned or realized by its inventors. So pervasive has email become – along with text messaging, or texting, and social media applications – that its use is indispensable in most people’s working lives, whether privately or publicly employed, as well as in their personal lives. Thus, the focus of this chapter is on the meaning and evolving status of electronic communications in the service of the public and the public’s right to access those communications in California as well as the balancing of public access and personal privacy.

Extending the Reach of the California Public Records Act, or Not...

“...in today’s environment, not all employment-related activity occurs during a conventional workday, or in an employer-maintained workplace.”

¹ From the California Supreme Court opinion cited as 2 Cal. 5th 608 (2017) (Case Number: S218066) written by Associate Justice Carol Corrigan which may be accessed at: http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2075289&doc_no=S218066&request_token=NilwLSInLkg%2BW1BNSCNNSExJUEA0UDxTliBeRzxSUCAgCg%3D%3D
A PDF version may also be read at: <http://www.courts.ca.gov/opinions/archive/S218066.PDF>

Recently decided litigation in the California courts on the California Public Records Act,² or CPRA, deals with the extent to which the act applies to electronic communications by, and between, public officials, public employees and those working outside government. Numerous cases have weighed questions of what is and is not a public record and whether the records in question should be accessible to the public. The main case, the story of which played out over nearly a decade, was decided in early 2017 in the California Supreme Court (hereinafter “the Court”). It addressed a “narrow issue,” which the Court outlines in a single, concise question³:

“Are writings concerning the conduct of public business beyond CPRA’s reach merely because they were sent or received using a nongovernmental account?”

While most discussion and litigation has surrounded public records made by public officials or institutions, this case also looks specifically at public employees. In the Court’s opinion:

“Considering the statute’s language and the important policy interests it serves, the answer is no.”

In overturning the ruling of the Court of Appeal (California’s Sixth Appellate District) which itself overturned the ruling of the original lower court, the California Supreme Court found unanimously as follows:⁴

“Employees’ communications about official agency business may be subject to CPRA regardless of the type of account used in their preparation or transmission.”⁵

Three important elements to keep in mind in these two sentences throughout this chapter are: “statutory language”, “policy interests” and the implications of the word “may” which will be discussed below. By its decision, the question is: has the Court gone beyond the scope (i.e., “beyond the reach”) of CPRA, closed a loophole, or merely clarified principles and procedures associated with CPRA and that have developed over the past decades in light of the use of electronic communications?

² The California Public Records Act, or CPRA, originally enacted in 1968, is codified in the California Government Code, section 6250, et seq. The court points out that the CPRA was modeled on the federal Freedom of Information Act, also known as FOIA, United States Code section 552.

³ From the main case at page 3.

⁴ Information on the overturned Court of Appeal opinion may be found at:

http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=6&doc_id=1997913

A PDF version may be found at: <http://www.courts.ca.gov/opinions/revpub/H039498M.PDF>

⁵ The court notes that at the time of the California Supreme Court ruling that “no documents from employee’s personal accounts have been collected or disclosed.”

This story, as it has evolved, is not merely a recitation of one court's decision related to a set of state codes, but a demonstration of the multi-faceted nature of public policy issues in California. The case involves examination of the CPRA and its purpose, the intersection of state government agencies and its officers and employees, individual citizens and the voting public. Also entailed are interpretations of the state constitution and determination of the intent of the legislature by the California courts, and, ultimately, who is to be the arbiter of public policy in California.

1968: The California Public Records Act and Public Policy

"The people have the right of access to information concerning the conduct of the people's business, and therefore...the writings of public officials and agencies shall be open to public scrutiny."

California Proposition 59 (2004)⁶

In 1968, California adopted the California Public Records Act, which was, decades later, formally incorporated it into the state's constitution.⁷ At that time, e-mail was not in use nor was electronic communication contemplated so much as the then everyday means and medium of business transactions – paper. As for electronic communications, the talk of the nation in and around that time, the early 1970s, concerned the so-called secret audiotapes of then-president Richard Nixon. Nearly half a century later, fascination with the tapes is still generating popular multi-volume titles.⁸

And, at present, public access issues continue to make headlines. In its 2017 opinion, the Court provided a discussion of the function of public access laws while acknowledging a balancing of public interest and personal privacy. It noted that the CPRA was created with this in mind and that the state legislature was well aware of privacy considerations and their underlying purpose and rationale. In addition, the court recognized, as embedded in the California Constitution, that the right to public access does not "supersede or modify existing privacy rights."⁹ The Court of Appeal also fully acknowledges this in its discussion of the case in its earlier opinion, which will be discussed below.

Furthermore, the Court in its opinion recognized that both the CPRA and the California Constitution "strike a careful balance between public access and personal privacy." In fact, the

⁶ Also known as the "Sunshine Amendment," or State Constitutional Amendment 1. California voters supported Prop. 59 (2004) which amended the state constitution.

⁷ California Constitution, Article I, section 3, subdivision (b)(1) via Proposition 59 (2004)

⁸ Brinkley, D., and Nichter, L., *The Nixon Tapes: 1973*, (2015) and, *The Nixon Tapes: 1971-1972*, (2014) re-issued in paperback.

⁹ The Court cited California Constitution, Article I, section 3, subdivision (b)(3).

CPRA includes a number of exceptions, or “exemptions” to the presumption of public access, including a “catch-all” clause recognizing that although a document may fit the definition of public, there are public policy interests – specifically privacy – that outweigh the need for public disclosure.¹⁰

So, while the Court made its ruling to overturn the Court of Appeal decision, with the word “may” it leaves open what can or must be disclosed and what may be subject to determination in court, which is nothing new. Numerous cases in California’s history bear out this point. Balancing between what should be public and what protects privacy interests, and are part of the Court’s opinion.

The Origins of the Case: Public Records and the City of San Jose

“Openness in government is essential to the functioning of a democracy. ‘Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.’”¹¹

In 2009, before “private servers” became a household word and a recurring political buzz term, a controversy was already brewing in San Jose, California.¹² Ted Smith – the real party in interest in this case – and described in news stories as a “San Jose activist” sued the City of San Jose. He brought suit because the City refused to disclose communications made on personal accounts of city officials *and employees [emphasis added]* related to a city redevelopment project.

The communications in question purportedly involved a broad array – more than three dozen categories, according to the court – of public records from the City including the City’s redevelopment agency, it’s executive director, other elected officials and their staffs, i.e., public employees. The e-mails and text messages in question included those on both public and private “devices.” They included not only city council members, but also their staffs (this inclusion is of central importance to the litigation discussed below).

¹⁰ For an example, see Paul, Stanley M., “Researcher Communications in California: The Public Interest in Non-disclosure” in *California Policy Options 2014* (pages 105-117) which may be accessed at: <https://issuu.com/uclapubaffairs/docs/californiapolicyoptions2014>

¹¹ The Court citing *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal. 4th 319 at 328-329.

¹² In compiling this summary, accounts of the case are taken from the California Courts (see above, footnotes 1 and 4) record as well as news media covering the controversy. See for example, John Woolfolk, “San Jose fights disclosure of email, text message records,” April 11, 2013. Available at: <http://www.mercurynews.com/2013/04/11/san-jose-fights-disclosure-of-email-text-message-records/>

While the City did disclose the phone numbers and email accounts used (and most of what was requested), at the date of the Court’s decision, it had not made any disclosures made from personal accounts. Nor were any employee documents “retrieved, collected, or disclosed,” according to the Court. Interestingly, in 2010 the City adopted a policy under which communications of public officials “whether they were communicated on personal or city phones and networks” could be disclosed. At the time, the City “drew praise for its progressive approach.”¹³ It was viewed as an early adopter of an open policy and as a proponent of government transparency.

Can You Hear Me Now? The Lower Court Decision

In 2013, the judge in the original trial court ruled in favor of Smith (technically, granted summary judgment), rejecting the City’s position that the items in question were “not public records within the meaning of the CPRA.” These four items originally requested by Smith included the following: “any and all voicemails, emails or text messages sent or received on private electronic devices used by the city’s mayor, members of the City Council, or their staff...” that pertained to the City’s redevelopment issue. The lower court also rejected the City’s contentions on two main issues:

- 1) Whether individual officials and employees fall under the definition of “public agency” under the CPRA (Yes), and,
- 2) That only records “within the public entity’s custody and control” are within the reach of the CPRA (No).

The Court of Appeal the Sixth District, in its judgment that followed, noted that the lower court expressed the view – which it did not endorse – that accepting the City’s argument would allow a public agency to “shield information from public disclosure simply by storing it on equipment it does not technically own.”

Friends Indeed: The Court of Appeal Reversal

“A statute, court rule, or other authority, including those in effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”

California Constitution, Article I, section 3, subdivision (b)(2)

The Court of Appeal focused on the issue of the definition of public records citing section 6252,

¹³ John Woolfolk, “San Jose fights disclosure of email, text message records,” April 11, 2013. Available at: <http://www.mercurynews.com/2013/04/11/san-jose-fights-disclosure-of-email-text-message-records/>

subdivision (e), which defines public records as “communications ‘prepared, owned, used, or retained” and whether communications by City officials and employees on their own private devices and accounts fall under that definition. It also acknowledged that under the California Constitution, “A statute, court rule, or other authority, including those in effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.”¹⁴ The Court of Appeal also made numerous references to the legislature such as “the Legislature’s objective,” “the legislature acknowledged,” and “legislative concern for individual privacy as well as disclosure,” which plays an important part in their decision. At the same time, numerous organizations representing various interests lined up on either side of this issue as *amici* or, “friends of the court,” filing *amicus curiae* briefs in support either of the City or on the side of Smith.¹⁵

Not surprisingly, a number of media organizations sided with Smith for more transparency while associations representing cities, elected officials and councils threw their support on the side of the City. These included (favoring non-disclosure) the California League of Cities, the California State Association of Counties and the Education Legal Alliance of the California School Boards Association among others. Among those supporting Smith (for disclosure) were the First Amendment Coalition, the California Newspaper Publishers Association, the Los Angeles Times Communications LLC, McClatchy Newspapers, Inc., and the California Broadcasters Association.¹⁶

Both the City and the League argued that the lower court’s decision, if upheld, would place undue burdens and costs on local agencies. Such agencies, they suggested, “have no viable, legal means of searching for and producing private documents of its employees and officials.” The League even suggested that it must be presumed, citing Evidence Code section 664, that “public officials are conducting City business in the public’s best interest, and not willfully dodging applicable laws and regulations.”¹⁷

¹⁴ California Constitution, Article I, section 3, subdivision (b)(2) which is cited in the 2013 California Supreme Court case *Sierra Club v. Superior Court*, 57 Cal. 4th.

¹⁵ “An *amicus curiae* brief (or *amicus* brief) is submitted by some entity or person not a party to the lawsuit to aid the court in gaining the information it needs to make a proper decision or to urge a particular result on behalf of the public or a private interest of third parties who will be affected by the resolution of the dispute.” Source: Gifis, Steven H., *Law Dictionary*, Barron’s Educational Series, Inc., 1996.

¹⁶ The extensive list of organizations filing amicus briefs may be found at: http://appellatecases.courtinfo.ca.gov/search/case/briefing.cfm?dist=0&doc_id=2075289&doc_no=S218066&request_token=NilwLSInLkg%2BW1BNSCNNSExJUEA0UDxTliBeRzxSUCAgCg%3D%3D

¹⁷ The California Supreme Court in the main case responds: “It is no answer to say, as did the Court of Appeal, that we must presume public officials conduct official business in the public’s best interest. The Constitution neither creates nor requires such an optimistic presumption. In 2014-15, a dust-up arose over a text-erasing phone application known as Cyber Dust and its use by the Fresno Unified School District’s superintendent and staff members. See MacKenzie Mays, “Critics demand discipline of Fresno Unified’s Michael Hanson over Cyber Dust test-erasing app,” *Fresno Bee*, October 1, 2015, available at:

In its opinion, the Court of Appeal did address requests – from both sides – to consider the issues at hand, but despite their “privacy concerns” and “practical considerations,” the Court of Appeal responded that “None of parties’ policy-based arguments informs our analysis of whether the requested communications are public records within the meaning of section 6252.” And, furthermore, recalling the Court of Appeal’s deference to the legislature, it states that it is “bound to interpret statutory language as written to avoid any encroachment on the province of the Legislature to declare public policy.” The Court of Appeal added to its opinion on determining statutory intent, stating that “As the Supreme Court [California] has reminded us, ‘the Legislature, and not the courts, is vested with the responsibility to declare the public policy of the state.’” It cited a number of cases on that point. Thus, the Court of Appeal wrote: “Whether personal accounts and devices of an individual must be deemed accessible for purposes of a CPRA request must be determined, if possible, by reading the language of the statute itself,” (a process which the California Supreme Court also detailed in making its subsequent decision).

As mentioned above, language plays an important role – in the form of interpreting a statute – in this controversy and was examined by both the Court of Appeal as well as the California Supreme Court. Interestingly, using the same framework for statutory interpretation, the courts came to opposite conclusions and rulings. The semantic wrangling occurred over the tail end of section 6252, subdivision (e) which defines “public records” as “to include any writing relating to the public’s business if it is ‘prepared, owned, used, or retained by any state or local agency.’” For the Court of Appeal, the meanings of “state” and “local” agencies and what they include as purportedly meant by the Legislature would determine whether the sought after communications could be considered public records within the confines, or “within the meaning” of the CPRA.

The City, for the purposes of this case, was considered a local agency. But Smith contended that *officials* and *employees* should be considered within the definition of local agency arguing that the records prepared, owned, used, or retained must be handled by people. Thus, the employees who do so would be part and parcel of a local agency, i.e., “one and the same” for the purposes of this case.

It is here that the Court of Appeal explained how it determines a statute’s meaning:

“When we interpret a statute, ‘[o]ur fundamental task...is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in

<http://www.fresnobee.com/news/local/education/article37274388.html>, and by the same reporter, “Former Fresno Unified staffer speaks out about Cyber Dust,” *Fresno Bee*, September 30, 2015, at: <http://www.fresnobee.com/news/local/education/article37157553.html>.

isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”

However, the court reminds and instructs how it will limit this application:

“We remain mindful, however, of the “strong public policy of the people’s right to information concerning the people’s business (Govt. Code section 6250), and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const. art. I, section 3, subd. (b)(2).)”

With these principles put forward as the framework from which it would make its determination, the Court of Appeal then focused on the “state” and “local agency” meaning. The Court of Appeal was unconvinced by Smith’s contention that individual employees and “local agency” were “one and the same.” In fact, the statute’s definition did not make any reference to “individual members or representatives of any public body.” With its stated deference to the Legislature, the Court of Appeal states, “The plain language of this provision thus denominates the legislative body as a whole; it does not appear to incorporate individual officials or employees of those entities. Had the Legislature intended to encompass such individuals within the scope of ‘public records’, it could have done so.”

The Court of Appeal concluded that the CPRA did not “extend its disclosure mandate to writings of individual city officials and employees sent or received on their private devices and accounts.” Furthermore, the Court of Appeal states that any attempts to conceal communications on public issues by city council members, while “a serious concern,” is the province of lawmakers “to deter with appropriate legislation.”

The Court of Appeal listed a number of cases that touch on related issues offered by participating *amici* and the parties, as well as what some other courts have ruled. But it found no exact parallels to the current case. It does however cite a case decided in another California Court of Appeal (First District, Division Two) in which the lower court found a “constructive possession” of documents and ordered a “reasonable effort be made in order to obtain the requested information” under the CPRA. In that case, decided in 2013, the First District Court of Appeal in reversing the lower court stated, “...no language in the CPRA creates an obligation to create or obtain a particular record when the document is not prepared, owned, used, or retained by the public agency.”¹⁸

The Court of Appeal ultimately ordered that the judgment of the lower court be vacated and that the original motion for summary judgment of the City (“petitioners” in this proceeding) be

¹⁸ See *Regents of University of California v. Superior Court*, 222 Cal. App. 4th 383 (2013).

granted. The conclusion of its decision is provided below in full to reiterate and demonstrate the Court of Appeal's deference to the Legislature:

"We conclude that the language of the CPRA does not afford a construction that imposes on the City an affirmative duty to produce messages stored on personal electronic devices and accounts that are inaccessible to the agency, or to search those devices or accounts of its employees and officials upon a CPRA request for messages related to City business. Whether such a duty better serves public policy is a matter for the Legislature, not the courts to decide. In addition, it is within the province of the agency to devise its own rules for disclosure of communications related to public business. The obstacles noted by petitioners and the League, – the legal and practical impediments attendant to the extra task of policing private devices and accounts – would be addressed more appropriately by the Legislature or the agency, not the courts."

California Supreme Court Ruling: The Curious Case of the Disembodied Governmental Agency

"A writing is commonly understood to have been prepared by the person who wrote it. If an agency employee prepares a writing that substantively relates to the conduct of public business, that writing would appear to satisfy the Act's [CPRA] definition of a public record."

City of San Jose v. The Superior Court of Santa Clara County (2017)

In overturning the Appellate Court's ruling, the California Supreme Court followed a parallel process of statutory interpretation and listed considerations of law and policy in doing so. As did the Court of Appeal, the Court recounted the facts, which are undisputed in this case, and enunciated the importance of access to information as weighed against the right to privacy and the balancing act that it involves. In addition, the Court discussed the exemptions related to privacy concerns built into the CPRA. And, the Court also provided instruction on how a statute must be interpreted recognizing language of the statute and legislative intent.

In its analysis, the Court next examined the notion of "public record" by four "aspects" of the definition provided by section 6252, subdivision (e)

- 1. Writing**
- 2. Relating to the Conduct of the Public's Business**
- 3. Prepared by Any State or Local Agency**
- 4. Owned, Used, or Retained by Any State or Local Agency**

As for the "writing" aspect, the Court noted that as opposed to paper documents, which in the past were "fairly formal and focused on the business at hand," electronic communications have

blurred the lines between official communication and “an electronic aside.”¹⁹ However, the Court opines that the second “aspect” – Relating to the Conduct of the Public’s Business – provides a “framework to distinguish between work-related and purely private communications.”

The Court, while citing section 6252, subdivision (e) which requires a public record to contain “information relating to the conduct of the public’s business,” observed that whether that record is “sufficiently related” to public business “will not always be clear.” It suggested that resolution of this question (especially in personal accounts) will often involve several “content specific” factors including context, purpose, audience and “whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment.” However, the Court said that the City’s claim that all communications in personal accounts are beyond the reach of CPRA was invalid. As a result, the Court noted that any dispute of the content of specific records was not before it, and so will have to wait for future proceedings to be resolved. However, the Court went on to say that “...to qualify as a public record under CPRA, at a minimum, a writing must relate in some way to the conduct of the public’s business.” The Court provided some examples, and noted that “communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records.”

The City had argued (see Court of Appeal section above) that writings must be “prepared, owned, used, or retained by any state or local agency” and that this language of the statute did not encompass communications which agency employees made through their personal accounts. But the Court was of the opinion that the state constitution, invoking the “broad construction” it mandates, supports the disclosure side of the argument. In addition, the Court indicated that the City dodged the “prepared by” aspect included in section 6252 subdivision (e), holding it to the statutory interpretation framework of giving “significance to every word, phrase, sentence, and part.”

In short, the City contended that the definition (as opposed to the definition of state agency which enumerates “every state office and ‘officer’”) does not include individuals, and in fact, that the distinction demonstrates it was the Legislature’s intent to exclude individuals from the local agency definition. However, the Court responded that this argument is “flawed,” stating that, “broadly construed, the term ‘local agency’ logically includes not just the discrete government entities listed in section 6252, subdivision (a) but also the individual officials and staff members who conduct the agencies’ affairs.” And, it pointed out that “it is well

¹⁹ “Electronic mail” was added to the definition of writing in California’s Government Code 6252 through California Assembly Bill 1962 which was approved by the governor in 2002. The definition also was added to the state’s evidence code (section 250). http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB1962

established that a government entity, like a corporation, can act only through its individual officers and employees.” In other words, it states, **“A disembodied governmental agency cannot prepare, own, use, or retain any record. Only the human beings who serve in agencies can do these things. When employees are conducting agency business, they are working for the agency on its behalf.”**

The Court, in addressing the Legislature’s intent, wrote, “We presume the Legislature was aware of these settled principles.” And, contrary to the Court of Appeal’s conclusion on Legislative intent, the Court stated – even if ‘employees’ are not specifically mentioned in the local agency definition – “nothing in the statutory language indicates the Legislature meant to *exclude* these individuals from CPRA obligations.” Furthermore, the Court says, **“A writing prepared by a public employee conducting agency business has been “prepared by” the agency within the meaning of section 6252, subdivision (e), even if the writing is prepared using the employee’s personal account.**

Owned, Used, or Retained: Strained Interpretations or a Constructive Possession

“...an agency’s public records ‘do not lose their agency character just because the official who possesses them takes them out the door.’”

Competitive Enterprise Institute v. Office of Science and Technology Policy (2016)²⁰

In drawing nearer to its conclusion, the Court revived the idea of “constructive” possession that was dismissed by the Court of Appeal. Like the federal Freedom of Information Act (FOIA) case cited above, the Court wrote: “We likewise hold that documents otherwise meeting CPRA’s definition of “public records” do not lose this status because they are located in an employee’s personal account.” Public records do not become private merely because they are located in a private account.

The Court reiterated the lower court’s contention stating, “The statute’s clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency’s possession.” To do so, said the Court, “would allow evasion of CPRA simply by the use of a personal account...The whole purpose of CPRA is to ensure transparency in government activities. If public officials could evade the law simply by clicking into a different email account,

²⁰ The Court cites this federal case related to the federal Freedom of Information Act (FOIA). The case from the United States Court of Appeals, District of Columbia Circuit, and cited as 827 F. 3d at p. 149) may be read at: [https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/\\$file/15-5128-1622973.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/75450CA390CB52C985257FE7005038BD/$file/15-5128-1622973.pdf)

or communicating through a personal device, sensitive information could routinely evade public scrutiny.”²¹

A Final Note on Conducting Searches

“We do not hold that any particular search method is required or necessary.”

City of San Jose v. The Superior Court of Santa Clara County (2017)

Responding to privacy concerns, as well as additional burdens that would be placed on public agencies -- as argued by the City and a number of participating *amici* -- the California Supreme Court included in its opinion some guidance on the search for documents, specifically those that might exist on private accounts.²² Both the City and interested parties strongly suggested that searches for documents under this ruling would be “tantamount to invading employee’s homes and rifling through their filing cabinets.” But, the Court indicated that “no case has extended the CPRA so far.” Furthermore, the Court stated that because, at the time of the Court’s ruling (2017), the City had made no attempt to search for or locate any documents in private accounts, that the “legality of a specific kind of search is not before us.”

The Court also noted that the CPRA does not “prescribe specific methods” in searching for documents and that agencies are capable of developing their own policies. In addition, the Court outlined some suggested methodology based on “some general principles that have emerged.” The Court also highlighted how federal courts have approached searches applying FOIA and noted that ultimately, “Agencies are in the best position to implement policies that fulfill their obligations...yet also preserve the privacy rights of their employees,” citing a recent Washington State Supreme Court case.²³

Lastly, the Court states:

²¹ See note 17. Prior to the 2017 decision of the California Supreme Court, the California Coastal Commission was embroiled in a similar controversy over emails and texts related to the 2016 firing of its executive director. See Aaron Kinney, “Coastal Commission denies request for commissioner’s emails,” *The Mercury News*, April 10, 2016. Available at: <http://www.mercurynews.com/2016/04/10/coastal-commission-denies-request-for-commissioners-emails/>. See also Aaron Kinney, “Coastal Commission reform bills die, but fight may go on,” *The Mercury News*, Sept. 1, 2016. Available at: <http://www.mercurynews.com/2016/09/01/coastal-commission-reform-bills-die-but-fight-may-go-on/>. In addition, the Court also cited a case wherein an exemption from disclosure was claimed (under CPRA) because the information was placed in confidential personnel records. The court rejected this writing that it is “unlikely the Legislature intended to render documents confidential based on their location, rather than their content.”

²² A 2015 *amicus curiae* brief filed by the League of California Cities and others may be found online at: [http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Request-Amicus-Support/Recent-Filings/Briefs-\(1\)/City-of-San-Jose-v-Smith_Supreme-Court-Amicus-Brie](http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Request-Amicus-Support/Recent-Filings/Briefs-(1)/City-of-San-Jose-v-Smith_Supreme-Court-Amicus-Brie).

²³ *Nissen v. Pierce County* (2015), 183 Wn. 2d 863 and 357 P.3d 45, 57.

“We do not hold that any particular search method is required or necessarily adequate. We mention these alternatives to offer guidance on remand and to explain why privacy concerns do not require categorical exclusion of documents in personal accounts from CPRA’s ‘public records’ definition. If the City maintains the burden of obtaining records from personal accounts is too onerous, it will have an opportunity to so establish in future proceedings.”

Conclusion

It is clear that in California, the emails and similar communications sent by public employees as part of the official conduct of business are subject to disclosure. However, the line that may be drawn between personal and public is not entirely clear. Nonetheless, it would be wise for public employees to consider the possibility that their electronic communications may at some point be made public, if any public business is discussed. Maybe erring on the side of caution is good advice for anyone, public or private, where email is concerned.

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